

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

TONY HILDERBRAND and
JANET HILDERBRAND,
individually, and as
husband and wife,

Plaintiffs,

vs.

Case No. 95-C-392-W

CITY OF KETCHUM, an
incorporated municipality,
Jim Matthews, individually,
and in his capacity as Chief
of Police of the City of
Ketchum,

Defendants.

ENTERED ON DOCKET
FEB 09 1996
DATE

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

All parties, through their respective counsel, stipulate that all of Plaintiffs' claims and causes of action against all of the Defendants are dismissed, without prejudice.

TOM C. LANE, SR. & ASSOCIATES

By: Tom C. Lane
TOM C. LANE, OBA #12746
P. O. Box 384
Sapulpa, Oklahoma 74067

ATTORNEY FOR PLAINTIFFS

ELLER AND DETRICH
A Professional Corporation

By: John H. Lieber
JOHN H. LIEBER, OBA #5421
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114
(918) 747-8900

ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN RE:

MAX ALEXANDER HEIDENREICH,

Debtor.

BUILDERS STEEL CO., et al.,

Plaintiffs/Appellant,

v.

MAX ALEXANDER HEIDENREICH,

Defendant/Appellee.

Bky. No. 89-1123-W
Chapter 7

Adversary No. 89-233-W

Case No. 94-C-905-B

ENTERED ON DOCKET

FEB 09 1996

ORDER

This order pertains to the appeal from the final order of the United States Bankruptcy Court for the Northern District of Oklahoma, denying the Defendant's Motion for Relief from Judgment, entered in this adversary proceeding on September 13, 1994.

This court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a). Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of conclusions of law or mixed questions of law and fact, which are subject to the de novo standard of review. In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988). This appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

In August of 1989, the plaintiffs filed a petition in the Bankruptcy Court alleging debtor's fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny,

and therefore objecting to the dischargeability of debts he owed them, as allowed by 11 U.S.C. § 523(a)(4).¹ Plaintiffs claimed debtor had violated Oklahoma's construction trust fund statutes, Okla. Stat. tit. 42, §§ 152 and 153. The Oklahoma Statutes require that the amount payable under any building or remodeling contract is to be held in trust by a contractor to pay all lienable claims that become due and owing under the contract.

On March 26, 1990, the Bankruptcy Court entered judgment in favor of plaintiffs and against debtor in the amount of \$81,409.87 and determined the liens to be valid and enforceable and the judgment to be nondischargeable. The Bankruptcy Court also entered an order making specific findings of fact that each plaintiff had a valid, perfected and enforceable material lien claim. On April 18, 1990, the court also entered a judgment in favor of plaintiffs and against defendant for attorney fees and costs in the amount of \$19,066.50.

Plaintiffs then brought an action in Tulsa County District Court to foreclose their liens, which was consolidated with several other lien foreclosure actions and the lender's action to foreclose its mortgage lien against the subject property. The action was ultimately settled on March 28, 1991, and as part of the settlement, the lien claimants, including plaintiffs, agreed to accept fifty percent of the amount of their lien claims in exchange for releasing their liens to allow the sale of the subject property to the Tulsa Ballet Theatre, Inc. Plaintiff, Builders Steel Co., Inc., received \$9,887.84, plaintiff, Gaines Plumbing and Piping Co., received \$11,467.29, and plaintiff, Commercial Ceilings &

¹ Title 11 of the United States Code, § 523(a)(4), states that a discharge under the Bankruptcy Code does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny"

Drywall, Inc., received \$24,349.82. The plaintiffs filed lien releases, which stated in part: "Be it known that we, the undersigned Contractors, Sub-Contractors, or Materialmen, do hereby for a valuable consideration, the receipt of which is hereby acknowledged, RELEASE and DISCHARGE Lien No. _____, filed _____, in the records of the County Clerk of Tulsa County, Oklahoma" On May 22, 1991, they filed in the bankruptcy court a Partial Release and Satisfaction of Judgment evidencing the receipt of the monies.

Defendant then filed a Motion for Relief from Judgment, relying on Fed. R. Civ. P. 60(b), made applicable to the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 9024. Debtor argued that the rule allows a party to seek relief from an order or judgment of the court under certain circumstances which were applicable to this case, including (1) when a judgment becomes void, (2) when a judgment is satisfied, released, or discharged, and (3) when it is no longer equitable that the judgment should have prospective application. Debtor claimed that plaintiffs had voluntarily, and without reservation, released and discharged entirely the liens which formed the basis of their action in bankruptcy court. Therefore debtor argued that plaintiffs no longer could receive the benefit of the Oklahoma trust fund statutes, as they did not have a "lienable claim."

Debtor relied on the court's ruling in In Re Weaver, 41 B.R. 649 (Bankr. W.D. Okla. 1984), but the holding is not applicable to this case. In Weaver, the court's requirement of a "lienable claim" to benefit from the trust fund statutes arose from a suit challenging the timing of the perfection of a materialman's lien. There is no question here that the liens were timely perfected and valid and enforceable.

In Bryan v. Manley, 135 B.R. 137 (Bankr. N.D. Okla. 1992), the Bankruptcy Court

found that punitive damages, awarded by the trial court for misapplication of funds by a contractor amounting to fraud under the Oklahoma construction trust fund statutes, were nondischargeable. The court stated:

In this Court's view, the Bankruptcy Court is not a forum for excusing misconduct. And there is no discharge for discharge's sake in bankruptcy. Discharge is a means to achieve the legitimate purpose of providing honest debtors with a deserved fresh start.' This is no reason to provide dishonest and vicious debtors with a ready escape from their deserved punishment.

Id. at 147.

The defendant in Bryan argued that there were no valid enforceable liens against the property which would invoke the protections afforded by the construction trust fund statutes. However, the bankruptcy court concluded that this did not excuse the contractor-trustee's breach of fiduciary duty to hold trust funds so that no liens need be created at all. "Subsequent misadventures of the creditor in pursuit of one remedy (the lien) need not take away the creditor's alternative remedy (available trust funds, or an award of damages for their unavailability). Whatever noncompliance with 42 O.S. § 142.1 [the lien notice statute] may have done to Discount's lien, it does not cancel [the contractor's] duty, nor remove his debt." Id. at 141 (quoting In re Turner, 134 B.R. 646, 656-57 (B.C. N.D. Okla. 1991)).

Debtor also claims that when the plaintiffs disposed of their lien claims and bypassed "the traditional sheriff's sale," they eliminated debtor's right to the benefits of Okla. Stat. tit. 12, § 686, which allows a right to offset the fair market value of property regardless of the amount obtained at a sheriff's sale. Section 686 sets out the procedure which a judgment creditor must follow to pursue a deficiency judgment in a mortgage

foreclosure action. However, Oklahoma law is clear that § 686 has no application to materialmen and mechanics liens. Local Fed. Savings & Loan v. Davison and Case Lumber Co., 255 P.2d 248, 255 (Okla. 1952).

Debtor was a fiduciary who received trust funds and misapplied them, causing damage to the plaintiffs. The bankruptcy court found that his liability was nondischargeable, pursuant to 11 U.S.C. § 523(a)(4), as an act of fraud or defalcation while acting in his fiduciary capacity. His fiduciary duty arose under the statutes when he received the funds. The subsequent release of the liens did not extinguish that duty or relieve the debtor from suffering the consequences of failure to perform that duty.


There are equitable considerations here, which the bankruptcy court recognized when it found that the creditors had the right to be made whole (Transcript of Hearing on Motion for Relief from Judgment, Ex. 2 to Appendix to Appellant's Brief in Chief, Dkt. #5, pg. 16). While it is appropriate to offset the debt by the amount of the partial releases, the debtor is still obligated for the remaining underlying debt because of his fraudulent breach of contract. The release of the liens did not make his behavior any less fraudulent.

Once plaintiffs obtained their judgment against debtor, they could have chosen not to pursue their lien foreclosure action and simply collected their judgment. However, because they aggressively pursued their lien foreclosure action, they were able to obtain a settlement which benefitted debtor by reducing the judgment amount. To accept debtor's argument is not only contrary to law, but would also unjustly penalize plaintiffs for pursuing other available remedies.

The Bankruptcy Court correctly denied the debtor's motion for relief from judgment

entered on March 16, 1990, finding it was not void, released or discharged by virtue of plaintiff's release of their mechanic's liens and partial release of judgment. The Bankruptcy Court's decision is affirmed.

DATED this 8th day of February, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOVIE LEE FULBRIGHT fka Dovie Lee
Johnson; COUNTY TREASURER, Tulsa
County, Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

ENTERED ON DOCKET

DATE FEB 09 1996

FILED

FEB 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Civil Case No. 95 C 1064H

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7th day of February,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendant, DOVIE LEE FULBRIGHT fka Dovie Lee Johnson, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, DOVIE LEE FULBRIGHT fka Dovie Lee Johnson, signed a Waiver of Summons on October 31, 1995.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on November 1, 1995; and that the Defendant, DOVIE LEE FULBRIGHT fka

NOTE: THIS CASE IS TO BE MAILED
BY THE CLERK OF COURT AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

Dovie Lee Johnson, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, DOVIE LEE FULBRIGHT, is one and the same person formerly known as Dovie Lee Johnson, and will hereinafter be referred to as "DOVIE LEE FULBRIGHT." The Defendant, DOVIE LEE FULBRIGHT, is a single unmarried person.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lot Seven (7), Block Three (3), LLOYD ADDITION to
the City of Tulsa, County of Tulsa, State of
Oklahoma, according to the recorded Plat thereof.**

The Court further finds that on March 30, 1977, the Defendant, DOVIE LEE JOHNSON and Dennis Donnell Johnson, executed and delivered to HARRY MORTGAGE CO., their mortgage note in the amount of \$14,000.00, payable in monthly installments, with interest thereon at the rate of Eight percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, DOVIE LEE JOHNSON, a single woman and Dennis Donnell Johnson, a single man, executed and delivered to HARRY MORTGAGE CO., a mortgage dated March 30, 1977, covering the above-described property. Said mortgage was recorded on March 31, 1977, in Book 4257, Page 449, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 11, 1977, HARRY MORTGAGE CO., assigned the above-described mortgage note and mortgage to FEDERAL NATIONAL

MORTGAGE ASSOCIATION. This Assignment of Mortgage was recorded on April 14, 1977, in Book 4259, Page 905, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 8, 1988, FEDERAL NATIONAL MORTGAGE ASSOCIATION, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his/her successors and assigns. This Assignment of Mortgage was recorded on November 14, 1988, in Book 5139, Page 1728, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 28, 1985, Dovie Lee Johnson, a married person and Dennis Donnell Johnson, a single person, granted a general warranty deed to Thomas Fulbright and Dovie Lee Fulbright, husband and wife. This deed was recorded with the Tulsa County Clerk on May 28, 1985, in Book 4865, at Page 1071, and the Defendant, DOVIE LEE FULBRIGHT, and Thomas Fulbright, now deceased, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on December 1, 1988, the Defendant, DOVIE LEE FULBRIGHT, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on September 1, 1989, September 1, 1990 and November 1, 1992.

The Court further finds that the Defendant, DOVIE LEE FULBRIGHT, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, DOVIE LEE FULBRIGHT, is indebted to the Plaintiff in the principal sum of \$15,624.97, plus interest at

the rate of 8 percent per annum from May 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$216.00, plus penalties and interest, for the year of 1995. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$6.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$6.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, DOVIE LEE FULBRIGHT, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, DOVIE LEE

FULBRIGHT, in the principal sum of \$15,624.97, plus interest at the rate of 8 percent per annum from May 1, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action in the amount, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$216.00, plus penalties and interest, for ad valorem taxes for the year 1995, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$12.00, plus costs and interest, for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, and DOVIE LEE FULBRIGHT, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, DOVIE LEE FULBRIGHT, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$216.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$12.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

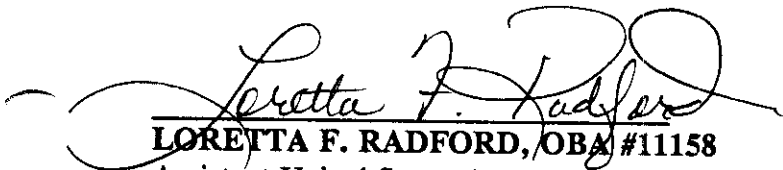
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

SI SVEN ERIK HOLLAND
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 1064H

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
FEB 09 1996
DATE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY WAYNE WATSON;
UNKNOWN SPOUSE IF ANY OF
TERRY WAYNE WATSON; EDWARD
LEON REA; UNKNOWN SPOUSE IF
ANY OF EDWARD LEON REA; STATE
OF OKLAHOMA ex rel OKLAHOMA
TAX COMMISSION; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

FEB 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Civil Case No. 95-C 697H

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7th day of February,
1996

~~1995~~ The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, appears by Assistant General Counsel Kim D. Ashley; and the Defendants, TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE WATSON, EDWARD LEON REA, and UNKNOWN SPOUSE IF ANY OF EDWARD LEON REA, appear not, but make default.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

The Court being fully advised and having examined the court file finds that the Defendants, TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE WATSON, EDWARD LEON REA, and UNKNOWN SPOUSE IF ANY OF EDWARD LEON REA, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 9, 1995, and continuing through November 13, 1995, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE WATSON, EDWARD LEON REA, and UNKNOWN SPOUSE IF ANY OF EDWARD LEON REA, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE WATSON, EDWARD LEON REA, and UNKNOWN SPOUSE IF ANY OF EDWARD LEON REA. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma,

through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, tulsa County, Oklahoma, filed their Answer on August 14, 1995; that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, filed its Answer on August 24, 1995; and that the Defendants, TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE WATSON, EDWARD LEON REA, and UNKNOWN SPOUSE IF ANY OF EDWARD LEON REA, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

LOT SIX (6), BLOCK SIX (6), VAL-CHARLES ADDITION
TO THE CITY OF TULSA, TULSA COUNTY, STATE OF
OKLAHOMA, ACCORDING TO THE RECORDED PLAT
THEREOF.

The Court further finds that on November 22, 1989, the Defendants, TERRY WAYNE WATSON and EDWARD LEON REA, executed and delivered to WOODLAND

BANK their mortgage note in the amount of \$41,468.00, payable in monthly installments, with interest thereon at the rate of 8.435% per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, TERRY WAYNE WATSON, A SINGLE PERSON AND EDWARD LEON REA, A SINGLE PERSON, executed and delivered to WOODLAND BANK a mortgage dated November 22, 1989, covering the above-described property. Said mortgage was recorded on November 28, 1989, in Book 5222, Page 1220, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 22, 1989, Woodland Bank assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on November 28, 1989, in Book 5222, Page 1226, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 7, 1991, MORTGAGE CLEARING CORPORATION assigned the above-described mortgage note and mortgage to SECRETARY OF HOUSING AND URBAN DEVELOPMENT OF WASHINGTON, D.C., HIS SUCCESSORS OR ASSIGNS. This Assignment of Mortgage was recorded on August 8, 1991, in Book 5341, Page 592, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 1, 1991, the Defendants, TERRY WAYNE WATSON and EDWARD LEON REA, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on February 1, 1992.

The Court further finds that the Defendants, TERRY WAYNE WATSON and EDWARD LEON REA, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, TERRY WAYNE WATSON and EDWARD LEON REA, are indebted to the Plaintiff in the principal sum of \$55,795.07, plus interest at the rate of 8.435 percent per annum from January 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$14.00 which became a lien on the property as of June 23, 1994; a lien in the amount of \$13.00 which became a lien as of June 25, 1993; and a lien in the amount of \$25.00 which became a lien on June 26, 1992. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, has a lien on the property which is the subject matter of this action by virtue of a tax warrant in the amount of \$486.51 which became a lien as of July 14, 1986. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE WATSON, EDWARD LEON REA, and UNKNOWN SPOUSE IF ANY OF EDWARD LEON REA, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendants, TERRY WAYNE WATSON and EDWARD LEON REA, in the principal sum of \$55,795.07, plus interest at the rate of 8.435 percent per annum from January 1, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$52.00, plus costs and interest, for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, have and recover judgment in rem in the amount of \$486.51 for state taxes, plus the costs and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE WATSON, EDWARD LEON REA, UNKNOWN SPOUSE IF ANY OF EDWARD LEON REA and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, TERRY WAYNE WATSON and EDWARD LEON REA, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, in the amount of 486.51, plus accrued and accruing interest for state taxes currently due and owing.

Fourth:

In payment of the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$52.00 for personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

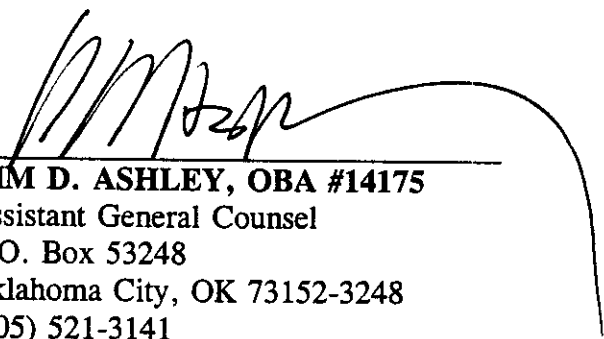
S/ SVEN ERIK HOLMES

UNITED STATES DISTRICT JUDGE

APPROVED:
STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


KIM D. ASHLEY, OBA #14175
Assistant General Counsel
P.O. Box 53248
Oklahoma City, OK 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma ex rel
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 95-C 697H

LFR/lg

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE FEB 0 1996

FILED

FEB 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

OXY USA, INC.,

Plaintiff,

versus

THE UNITED STATES DEPARTMENT OF
THE INTERIOR;
BRUCE BABBITT, SECRETARY,
DEPARTMENT OF THE INTERIOR;
ROBERT ARMSTRONG, SECRETARY -
LAND AND MINERALS MANAGEMENT
DEPARTMENT OF THE INTERIOR;
TOM FRY, DIRECTOR,
MINERALS MANAGEMENT SERVICE,
DEPARTMENT OF THE INTERIOR;
and GARY L. JOHNSON, AREA MANAGER,
DALLAS AREA AUDIT OFFICE,
MINERALS MANAGEMENT SERVICE,
DEPARTMENT OF THE INTERIOR,

Defendants.


CIVIL ACTION

NO. 93-CV-00667

ORDER

Upon consideration of the Stipulation of Dismissal, it is **ORDERED** that the action
be and hereby is dismissed.

ENTER: February 7TH, 1996.


JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NORMA CALHOUN,
Plaintiff,

v.

LIVING CENTERS OF AMERICA,
INC., a foreign corporation; and
LIVING CENTERS OF TEXAS, INC.,
a foreign corporation, d/b/a REGENCY
PARK NURSING HOME,
Defendants.

Case No. 94-C-628-H

ENTERED ON DOCKET
DATE FEB 09 1996
DATE FEB 09 1996

FILED

FEB 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on Plaintiff's Motion for Attorneys' Fees (Docket #92) ; and Plaintiff's Motion for Judicial Review of Bill of Costs (Docket #95).

Plaintiff brought this wrongful discharge action against Defendants, claiming that she was discharged in violation of public policy. Following a jury verdict, judgment was entered in the above case on December 5, 1995, awarding Plaintiff \$10,000 in compensatory damages and \$5,000 in punitive damages. Plaintiff now seeks attorneys' fees and costs.

Oklahoma courts generally follow the American rule on attorneys' fees. Thus, "[t]he prevailing party may not recover an attorneys' fee against its adversary absent some authorizing statute or contract." Smith v. Jenkins, 873 P.2d 1044 (Okla. 1994). Absent controlling authority to the contrary, the Court finds no reason to depart from the general rule in this case. Plaintiff's request for attorneys' fees is therefore denied.

Plaintiff also asks the Court to review the assessment of costs made by the Clerk of the Court. Specifically, Plaintiff seeks costs associated with the taking and copying of certain depositions, which were denied by the Clerk. The Guidelines Employed by the Clerk When Taxing Costs provide:

[T]he reporter charge for the original of a deposition is taxable when the deposition is reasonably necessary to the litigation. The cost of a copy of a deposition is also taxable when each copy is reasonably necessary to the litigation.

A deposition is reasonably necessary to the litigation when:

- 1) A substantial portion of the deposition is admitted into evidence, or
- 2) Portions of the transcript are presented for the purpose of impeachment, or
- 3) It is demonstrated that the deposition was used by the Court in ruling on a motion for summary judgment.

The expenses for depositions taken for merely investigational purposes or purely for discovery or simply in the course of thorough preparation will not ordinarily be taxed as costs.

Guideline B.

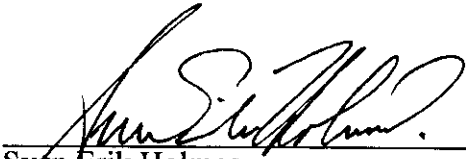
The Guidelines, however, recognize that "there are circumstances that would warrant the awarding of costs outside the stated parameters." Because of certain unique circumstances involved in this case, the Court determines that the standard "typically" followed will not apply to all properly taxable costs in this matter. Accordingly, the Court finds that the following fees are taxable: the fees for taking the deposition of Luke Wright and the fees for obtaining copies of the depositions of Charles Frank, Neal Putman, and Margorie Cowden. The Court concludes that the fees for taking the deposition of Pat Faris are not taxable. The Court therefore remands Plaintiff's Bill of Costs to the Court Clerk to include the following costs:

Costs taxed on January 18, 1996	\$967.28
Subpoena fee for Luke Wright	2.32
Court Reporter fees for deposition of Luke Wright	616.80
Fees for copies of depositions for:	
Charles Frank	74.90
Neal Putman and Margorie Cowden	<u>145.70</u>
TOTAL BILL OF COSTS TAXED	\$1807.00

The Court hereby denies Plaintiffs' motion for attorneys' fees (Docket #92) and remands Plaintiff's Bill of Costs to the Court Clerk (Docket #95).

IT IS SO ORDERED.

This 7TH day of February, 1996.


Sven Erik Holmes
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEB 8 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WALTER CHARLES SMITH,
Petitioner,
vs.
RON CHAMPION and THE
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA,
Respondents.

Case No. 95-C-199-BU

ENTERED ON DOCKET

DATE FEB 8 1996


ORDER

This matter comes before the Court upon the Amended Report and Recommendation of U.S. Magistrate Judge issued by United States Magistrate Judge John Leo Wagner on January 17, 1996, wherein he recommended that Petitioner's Petition for a Writ of Habeas Corpus be dismissed. In the Amended Report and Recommendation of U.S. Magistrate Judge, Magistrate Judge Wagner advised the parties that in accordance with 28 U.S.C. § 636(b), any objections to the Amended Report and Recommendation of U.S. Magistrate Judge were to be filed within ten (10) days of the filing of the Amended Report and Recommendation of U.S. Magistrate Judge. To date, neither Petitioner nor Respondents have filed any objections to Magistrate Judge Wagner's Amended Report and Recommendation of U.S. Magistrate Judge.

Having reviewed the matter, the Court agrees with the findings and recommendation of Magistrate Judge Wagner and accepts Magistrate Judge Wagner's Amended Report and Recommendation of U.S. Magistrate Judge in its entirety.

Accordingly, the Court **AFFIRMS** the Amended Report and Recommendation of U.S. Magistrate Judge (Docket Entry #7) and **DISMISSES** Petitioner's Petition for Writ of Habeas Corpus (Docket Entry #1). The Court also **DECLARES AS MOOT** the Report and Recommendation of U.S. Magistrate Judge (Docket Entry #6).

ENTERED this 8th day of Feb, 1996.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

GARY D. DAWSON,

Plaintiff,

v.

THE CITY OF BARTLESVILLE,
OKLAHOMA, CHIEF STEVEN BROWN,
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY, ROBERT
E. METZINGER, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY,
AND THE BARTLESVILLE POLICE
OFFICERS ASSOCIATION, LOCAL
97, IUPA, AFL-CIO,

Defendants.

FEB - 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 95-C-234-K

ENTERED ON DOCKET

DATE FEB 09 1996

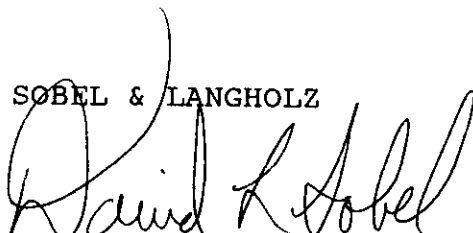
STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereby stipulate to a Dismissal With Prejudice of Plaintiff's causes of action in this case against Defendant, Robert E. Metzinger, individually and in his official capacity as City Manager of the City of Bartlesville, Oklahoma.

DATED this 8th day of February, 1996.

SOBEL & LANGHOLZ

By:


David L. Sobel, Esq.
701 ONEOK Plaza
Tulsa, OK 74103
(918) 584-7700

ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LINDA BROADHURST aka Linda K.
Broadhurst; UNKNOWN SPOUSE OF
Linda Broadhurst aka Linda K. Broadhurst;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

F I L E D

FEB 8 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE FEB 09 1996

Civil Case No. 95-C 780BU

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8th day of Feb,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, LINDA BROADHURST aka Linda K. Broadhurst and UNKNOWN SPOUSE OF Linda Broadhurst aka Linda K. Broadhurst, if any, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, LINDA BROADHURST aka Linda K. Broadhurst, was served with process a copy of Summons and Complaint on October 16, 1995.

The Court further finds that the Defendant, UNKNOWN SPOUSE OF Linda Broadhurst aka Linda K. Broadhurst, if any, was served by publishing notice of this action in

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning November 3, 1995, and continuing through December 8, 1995, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, UNKNOWN SPOUSE OF Linda Broadhurst aka Linda K. Broadhurst, if any, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, UNKNOWN SPOUSE OF Linda Broadhurst aka Linda K. Broadhurst, if any. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to their present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answer on September 5, 1995; and that the Defendants, LINDA BROADHURST aka Linda K. Broadhurst and UNKNOWN SPOUSE OF Linda Broadhurst aka Linda K. Broadhurst, if any, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, LINDA BROADHURST, is one and the same person as Linda K. Broadhurst, and will hereinafter be referred to as "LINDA BROADHURST."

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Forty-seven (47), Block Four (4), WEST HIGHLANDS II, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on April 1, 1988, James E. Haynes, Jr. and Karol A. Haynes, executed and delivered to SECURITY BANK, their mortgage note in the amount of \$57,920.00, payable in monthly installments, with interest thereon at the rate of Nine and One-Half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, James E. Haynes Jr. and Karol A. Haynes, husband and wife, executed and delivered to SECURITY BANK, a mortgage dated April 1, 1988, covering the above-described property.

Said mortgage was recorded on April 15, 1988, in Book 5093, Page 1751, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 1, 1988, SECURITY BANK, assigned the above-described mortgage note and mortgage to MORTGAGE CLEARING CORPORATION. This Assignment of Mortgage was recorded on April 15, 1988, in Book 5093, Page 1756, in the records of Tulsa County, Oklahoma. This Assignment of Mortgage was re-recorded on May 3, 1988, in Book 5096, Page 2232, in the records of Tulsa County, Oklahoma, to show correct spelling of the borrower's last name.

The Court further finds that on April 9, 1991, MORTGAGE CLEARING CORPORATION, assigned the above-described mortgage note and mortgage to TRIAD BANK, N.A. This Assignment of Mortgage was recorded on April 10, 1991, in Book 5314, Page 1357, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 9, 1991, TRIAD BANK, N.A., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on April 12, 1991, in Book 5315, Page 0171, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendant, LINDA BROADHURST, currently holds title to the property by virtue of a General Warranty Deed, dated June 12, 1990, and recorded on June 15, 1990, in Book 5259, Page 1215, in the records of Tulsa County, Oklahoma, and is the current assumpor of the subject indebtedness.

The Court further finds that on April 8, 1991, the Defendant, LINDA BROADHURST, entered into an agreement with the Plaintiff lowering the amount of the

monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on November 20, 1991, February 11, 1992 and August 26, 1992.

The Court further finds that the Defendant, LINDA BROADHURST, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, LINDA BROADHURST, is indebted to the Plaintiff in the principal sum of \$83,277.50, plus interest at the rate of 9.5 percent per annum from March 24, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$53.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$51.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$47.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, LINDA BROADHURST and UNKNOWN SPOUSE OF Linda Broadhurst aka Linda K. Broadhurst, if any, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendant, LINDA BROADHURST, in the principal sum of \$83,277.50, plus interest at the rate of 9.5 percent per annum from March 24, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$151.00, plus costs and interest, for personal property taxes for the years 1991, 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, LINDA BROADHURST and UNKNOWN SPOUSE OF Linda Broadhurst aka Linda K. Broadhurst, if any, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, LINDA BROADHURST, to satisfy the In Rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election

with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$151.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the

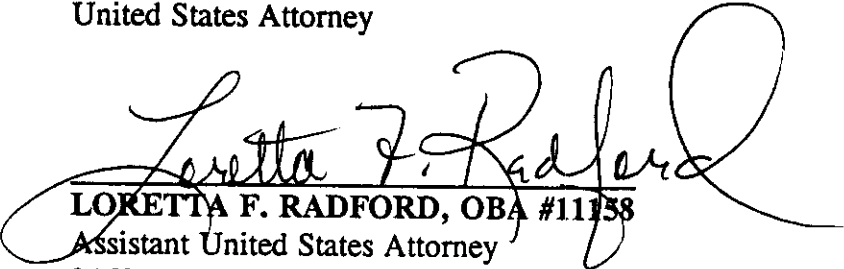
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ MICHAEL BURRAGE


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11138
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 780BU

LFR:flv

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ARTHUR L. BLACK,

Plaintiff,

vs.

BAKER OIL TOOLS, INC., a
division of BAKER HUGHES,
INC., a corporation,

Defendant.

Case No. 95-C-126-K

ENTERED ON DOCKET

DATE FEB 0 9 1996

FILED

FEB 0 8 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT


JUDGMENT

This matter came before the Court for consideration of the Motion by Defendant Baker Oil Tools, Inc. for Summary Judgment against Plaintiff Arthur L. Black.

The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for Defendant Baker Oil Tools, Inc and against Plaintiff Arthur L. Black.

ORDERED THIS DAY OF 7 FEBRUARY, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

54

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE FEB 09 1996

ARTHUR L. BLACK,

Plaintiff,

vs.

BAKER OIL TOOLS, INC., a
division of BAKER HUGHES,
INC., a corporation,

Defendant.

Case No. 95-C-126-K

FILED

FEB 08 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

ORDER

Now before the Court is the motion for summary judgment by Defendant Baker Oil Tools, Inc. ("Baker") against Plaintiff Arthur L. Black ("Black"). Black sues Baker for breach of an employment contract. Baker denies the existence of the contract and claims that even if the contract existed, it was extinguished prior to Baker's alleged breach.

Black was employed at Baker as a supervisor when he suffered a heart attack. Black alleges that despite his desire to continue on as an employee, Baker forced him to retire in September 1992 because of his handicap--i.e., his heart condition. Black asserts that in forcing him to retire, Baker breached an implied contract not to discriminate against its employees based on their handicaps. Black contends that the implied contract arose from policy statements contained in personnel manuals given to Baker supervisors.

Oklahoma recognizes the employment at-will doctrine. In the absence of an implied or express agreement between the employer and its employees, the employer may terminate an

employee at any time with or without cause. Carnes v. Parker, 922 F.2d 1506, 1510 (10th Cir. 1991) (citing Singh v. Cities Serv. Oil Co., 554 P.2d 1367, 1368-69 (Okla. 1976)). Under the classic statement of the at-will doctrine, "an employer may discharge an employee for good cause, for no cause, or even for cause morally wrong." Hayes v. Eateries, 905 P.2d 778, 781 (Okla. 1995).

However, the employment-at-will doctrine has been judicially limited by exceptions. One such exception recognized by Oklahoma courts is the doctrine of implied contract, whereby a written statement by an employer may be deemed to have altered the employment at-will relationship, creating a basis for a terminated employee's action for breach of contract. Carnes, 922 F.2d at 1510. Oklahoma courts have held that language in personnel manuals and handbooks may be sufficient to create such an enforceable implied contract. Id. (citing Hinson v. Cameron, 742 P.2d 549 (Okla. 1987)); Gilmore v. Enogex, Inc., 878 P.2d 360, 368 (Okla. 1994) (explaining that Oklahoma jurisprudence recognizes that an employee handbook can form the basis of an implied contract). See also Langdon v. Saga Corp., 569 P.2d 524, 527-28 (Okla. App. Ct. 1976) (holding that a personnel manual was a contract defining the employer-employee relationship during the period the policy was in effect).

Oklahoma courts, nevertheless, have placed limitations on the doctrine of implied contract by employee handbook. The scope of the implied contract is restricted to the express terms of the manual. "[P]romises in the employee manual which may operate to restrict the employer's power to discharge must be in definite terms--not in the form of vague assurances." Gilmore v. Enogex, Inc., 878 P.2d 360, 368 (Okla. 1994). In addition, disclaimers in employee handbooks or manuals may preclude the alteration of the at-will employment relationship.

Johnson v. Nasca, 802 P.2d 1294, 1297 (Okla. App. Ct. 1990) ("While an employer may disclaim the creation of contractual rights, such a disclaimer must be clear."). See also Avey v. Hillcrest Medical Center, 815 P.2d 1215, 1217 (Okla. App. Ct. 1991); Hinson v. Cameron, 742 P.2d 549, 560 n.14 (Okla. 1987) (Kauger, J., concurring in part, dissenting in part) (indicating that "conspicuous disclaimers" in employee handbooks could have the effect of negating a contractual obligation on the part of the employer). See generally, George L. Blum, Annotation, *Effectiveness of Employer's Disclaimer of Representations in Personnel Manual or Employee Handbook Altering At-Will Employment Relationship*, 17 A.L.R.5th 1 (1995).

In the instant case, Black relies on the "Supervisor Human Resources Policy Manual" as the basis of the implied contract under which he is suing Baker. That manual, given to supervisors, contained a page entitled, "Human Resources Policies: Equal Employment Opportunity." The following is an excerpt of the relevant portions of that document:

GENERAL:

It is the policy of Baker Oil Tools to grant equal employment opportunity to all qualified persons without regard to . . . physical . . . handicap. To deny one's contribution to our efforts because he or she is a member of a minority group is an injustice, not only to the individual, but to the company as well. It is the intent and desire of the company that equal employment opportunity will be provided in employment, promotions, wages, benefits and all other privileges, terms, and conditions of employment.

SCOPE:

The Baker Oil Tools policy of non-discrimination must prevail throughout every aspect of the employment relationship, including . . . layoff . . . and termination.

PURPOSE:

The purpose of this policy is to reaffirm the Division's position regarding non-discrimination in all matters relating to employment throughout the organization.

(Hereinafter "EEO Statement".)

For the reasons stated below, the EEO Statement did not create an implied contract that

altered the terms of the at-will relationship between Baker and its employees. First, the identical EEO Statement was clearly and expressly disclaimed in another manual given to supervisors.

That document, the Human Resources Policies and Procedures Manual, which also contains the EEO Statement, begins with the following disclaimer: "This Manual is not intended to contain a complete listing of all Baker Oil Tool's policies nor is it intended to imply any contractual obligations. Baker Oil Tools expects to continue these policies indefinitely but reserves the right to terminate or amend them at any time." This disclaimer was sufficiently clear to put Black on notice that the EEO Statement was not meant to imply contractual obligations upon Baker.

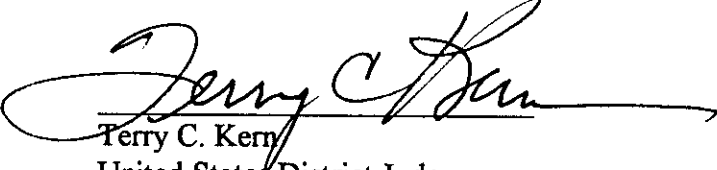
Second, the EEO Statement was apparently contained in manuals given only to Baker supervisors; whereas, it is *employee* manuals and handbooks that are ordinarily the source of implied contracts. See Gilmore v. Enogex, Inc., 878 P.2d 360, 368 (Okla. 1994). Third, while the employee handbook apparently did not contain the EEO statement, it did contain an express disclaimer putting all Baker employees on notice that policy statements in employee materials were not meant to alter the at-will relationship between Baker and its employees.¹ Fourth, the EEO Statement itself did not provide "in definite terms" a guarantee against discharge due to

¹That handbook, entitled the Baker Oil Tools Employees' Handbook, begins with an introduction containing the following statements: "This handbook is not an employment agreement, a contract of employment, or a guarantee of continued employment with Baker Oil Tools and/or its subsidiaries, foreign or domestic. Employment with Baker Oil Tools is 'at will,' which means that you or Baker may terminate the employment relationship at anytime." At the bottom of the page is a paragraph entitled, "DISCLAIMER" which states, "This employee handbook has been drafted as a guideline for our employees. It shall not be constructed to form a contract between the Company and its employees. Rather, it describes the Company's general philosophy concerning policies and procedures."

handicap, but rather was a general policy statement of nondiscrimination.² See Gilmore, 878 P.2d at 369 (Okla. 1994) (refusing to “imply terms in the context of obscure or ambiguous language.”); Dupree v. United Parcel Service, 956 F.2d 219, 222 (10th Cir. 1992) (holding that policy statements that are not specific cannot form an implied contract).

Often, an inquiry into whether an implied contract exists would present factual questions for a jury. See id.; Johnson v. Nasca, 802 P.2d 1294, 1297 (Okla. App. Ct. 1990). However, given the record, this Court holds that there is no genuine issue as to the existence of the alleged implied contract. The EEO Statement in the Supervisor Human Resources Policy Manual did not create an implied contract. See Dupree, 956 F.2d at 222. See also Anderson v. Liberty Lobby, Inc., 477 U.S.242, 251-52 (1986). Since Black has failed to make a showing sufficient to establish the existence of an element essential to his case and on which he would bear the burden of proof at trial, summary judgment is mandated by Rule 56. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Baker’s motion for summary judgment is therefore GRANTED.

ORDERED THIS 7 DAY OF FEBRUARY, 1996.


Terry C. Kern
United States District Judge

² Black cannot bolster his claim of the existence of an implied contract by offering deposition testimony by Baker employees that it was Baker’s policy not to discriminate against employees on the basis of their handicaps. The Tenth Circuit has explained that a personnel manual alters the relationship between an employer and employee “only to the extent that policies on which [the employee] now relies are *expressly stated in the manual*.” Carnes v. Parker, 922 F.2d 1506, 1510 (10th Cir. 1991) (emphasis added). A court must “consider the express terms of an employment policy contained in a personnel manual--nothing more, nothing less.” Id. at 1511.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE FEB 0 0 1996

FEB 0 9 1996

FILED

GARY D. DAWSON,

Plaintiff,

v.

THE CITY OF BARTLESVILLE,
OKLAHOMA, CHIEF STEVEN BROWN,
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY, ROBERT
E. METZINGER, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY,
AND THE BARTLESVILLE POLICE
OFFICERS ASSOCIATION, LOCAL
97, IUPA, AFL-CIO,

Defendants.

FEB - 8 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 95-C-234-K

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereby stipulate to a Dismissal With Prejudice of Plaintiff's causes of action in this case against Defendant, Steven Brown, individually and in his official capacity as Chief of Police of the City of Bartlesville, Oklahoma.

DATED this 8th day of February, 1996.

SOBEL & LANGHOLZ

By: 

David L. Sobel, Esq.
701 ONEOK Plaza
Tulsa, OK 74103
(918) 584-7700

ATTORNEYS FOR PLAINTIFF

DOERNER, SAUNDERS, DANIEL & ANDERSON

BY:

Kathy R. Neal
Kathy R. Neal, OBA No. 674
Rebecca M. Fowler, OBA No. 13682
320 South Boston Avenue
Suite 500
Tulsa, Oklahoma 74103-3725
(918) 582-1211

ATTORNEYS FOR DEFENDANT, CHIEF STEVEN
BROWN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BARBARA FRICKER and JIM FRICKER)

Plaintiffs,)

vs.)

THE GOLDEN CORRAL CORPORATION)
d/b/a GOLDEN CORRAL RESTAURANT)
and PHIL ZINGA,)

Defendants.)

ENTERED ON DOCKET

DATE ~~FEB 0 8 1996~~

No. 94-C-1158-K

FILED

FEB 0 8 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

JUDGMENT

In accordance with the jury verdict rendered on January 23, 1996, wherein the jury found Plaintiff's negligence to be 88% and Defendant's negligence to be 12%, judgment is hereby entered in favor of the Defendant, Golden Corral Corporation d/b/a Golden Corral Restaurant. Costs are assessed against the Plaintiff if timely applied for under local Rule 6, parties to bear their own attorney fees.

DATED this 7 day of February, 1996.

s/ TERRY C. KERN

JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILLY B. BERRY;
MARY CATHRINE BERRY;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,
CITY OF TULSA;

Defendants.

ENTERED ON DOCKET
DATE ~~FEB 0 8~~ 1996

FILED

FEB 08 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

) CIVIL ACTION NO. 95-C-0075-K

DEFICIENCY JUDGMENT

This matter comes on for consideration this 7 day of February, 1996, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendants, **Billy B. Berry and Mary Cathrine Berry**, appear neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that copies of Plaintiff's Motion and Declaration were mailed by first-class mail to Billy B. Berry and Mary Cathrine Berry, P.O. Box 6547, Tulsa, Oklahoma 74156-0547, and by first-class mail to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on July 14, 1995, in favor of the Plaintiff United States of America, and against the Defendants, **Billy B. Berry and Mary Cathrine Berry**, with interest and costs to date of sale is \$20,142.25.

The Court further finds that the appraised value of the real property at the time of sale was \$10,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered July 14, 1995, for the sum of \$6,670.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on JAN. 17 1996.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, **Billy B. Berry and Mary Cathrine Berry**, as follows:

Principal Balance Plus Pre-Judgment	\$18,526.21
Interest as of 07-14-95	
Interest From Date of Judgment to Sale	247.00
Appraisal by Agency	550.00
Abstracting	430.00
Publication Fees of Notice of Sale	164.04
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$20,142.25
Less Credit of Appraised Value	<u>10,000.00</u>
DEFICIENCY	\$10,142.25

plus interest on said deficiency judgment at the legal rate of 4.89 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

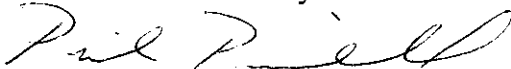
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, **Billy B. Berry and Mary Cathrine Berry**, a deficiency judgment in the amount of **\$10,142.25**, plus interest at the legal rate of 4.89 percent per annum on said deficiency judgment from date of judgment until paid.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Deficiency Judgment
Case No. 95-C-0075-K

PP:css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CORINE ALEXANDER,
Plaintiff,

vs.

THE CITY OF TULSA, et al.,
Defendants.

No. 95-C-332-K

ENTERED ON DOCKET
DATE FEB 09 1996

FILED

FEB 08 1996

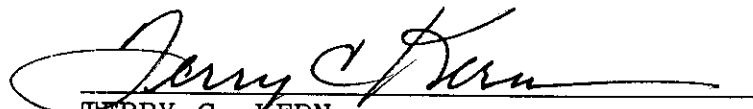
ADMINISTRATIVE CLOSING ORDER

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

The Court has been advised that this action has settled or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 7 day of February, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

23

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOWARD W. IDDINGS, et al.

Plaintiff(s),

vs.

BENEFUND, INC., et al.

Defendant(s).

Civil No.: 94-C-1056-H

FILED

FEB - 7 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 2-8-96

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of February 7, 1996
and the affidavit of Steven K. Balman, that the defendant(s),
Ronald P. Whittier, William J. Cardie and Inland Commercial Investments
against whom judgment for affirmative relief is sought in this action, ha(s)(ve) failed to plead
or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, RICHARD M. LAWRENCE, Clerk of said Court, pursuant to the requirements of
Rule 55(a) of said rules, do hereby enter the default of said defendant.

Dated at Tulsa, Oklahoma this 7th day of February 1996.

RICHARD M. LAWRENCE,

Clerk, U.S. District Court

Mark C. McCartt, Acting Clerk

By: S. Adamski

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

AVTECH, INC., an Oklahoma)
corporation, and)
DONALD A. MCCANCE,)

Plaintiffs,)

v.)

Civil Action No. 94-C-790-H

AMPCO, INC., a New York)
corporation, and)
CONSUMER WATCH CORPORATION, a)
New York corporation,)
GLAZE, INC., a New Jersey)
corporation, and SEAGRY)
INTERNATIONAL (ASIA) LIMITED,)
a Hong Kong corporation,)

Defendants.)

ENTERED ON DOCKET
DATE 2-8-96

JUDGMENT GRANTING PERMANENT INJUNCTION

In accordance with 35 U.S.C. § 283 and Fed. R. Civ. P. 65(d), and there being no just reason for delay under Fed. R. Civ. P. 54(b), it is ordered and adjudged that:

- (1) United States Patent 5,269,261 ("Utility Patent") is valid;
- (2) United States Patent Des. 345,633 ("Design Patent") is valid;
- (3) The "KITTY KAT TRAK", "SCRATCH-N-CHASE" and "PLAY-N-SCRATCH" products infringe claims 1, 10 and 11 of the Utility patent, as well as the Design Patent;
- (4) All of the Defendants' affirmative defenses and counterclaims are dismissed, with prejudice.

INJUNCTION ORDER

Defendants AMPCO, Inc., Consumer Watch Corporation, Glaze,

Inc., and Seagry International (Asia) Limited, and any of their respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are hereby permanently enjoined and restrained from directly or indirectly making or causing to be made, using or causing to be used, selling or causing to be sold, any and all apparatus made in accordance with or embodying the invention claimed in the U.S. patent nos. 5,269,261 and Des. 345,633 including but not limited to the "KITTY KAT TRAK", "SCRATCH-N-CHASE" and "PLAY-N-SCRATCH" products, and from infringing upon or violating the rights of the plaintiffs in the patents in any way whatsoever.

DAMAGES

Proceedings on Plaintiffs' claim for damages against all defendants except Glaze, Inc., will take place according to a separate order of this Court. Plaintiffs' claims for damages against Defendant Glaze, Inc., are hereby dismissed.

S/ SVEN ERIK HOLMES

UNITED STATES DISTRICT JUDGE

Date: February 5, 1996

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES W. STRIEGEL aka James N.
Striegel; UNKNOWN SPOUSE OF
James W. Striegel aka James N. Striegel, if
any; DONNA STRIEGEL aka Donna G.
M. Striegel aka Donna M. Striegel;
UNKNOWN SPOUSE OF Donna Striegel
aka Donna G. M. Striegel aka Donna M.
Striegel, if any; LOUIS E. STRIEGEL;
MARGARET S. STRIEGEL; CENTURY
XXI EAST, INC.; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

ENTERED ON DOCKET

DATE FEB 08 1998

Civil Case No. 95-C 0110B

ORDER OF DISBURSAL

NOW on the 7 day of Feb., 1996, there came on for
consideration the matter of disbursal of \$15,301.00 received by the United States Marshal for
the sale of certain property described in the Notice of Sale in this case. The Court finds that
the said \$15,301.00 should be disbursed as follows:

United States Marshal's Costs	\$479.12
Executing Order of Sale	\$3.00
Advertising Sale Fee	3.00
Conducting Sale	3.00
Appointing Appraisers	6.00
Appraisers' Fees	225.00
Publisher's Fee	192.49

Order and Notice Setting
Motion for Hearing

46.63

United States Department of Justice
Credit for Judgment of \$40,710.63

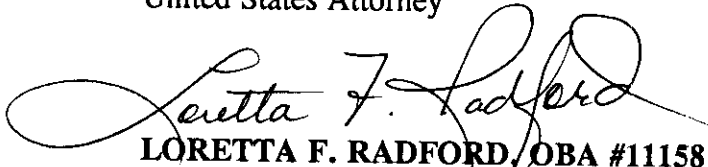
\$14,821.88

S/ THOMAS R. BRETT

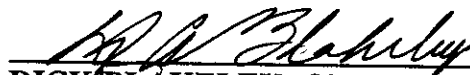
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK BLAKELEY, OBA #882
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CONNIE J. ARELLANO; MANUEL
TORRES ARELLANO; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

ENTERED ON DOCKET

DATE FEB 08 1996

FILED

FEB 08 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

Civil Case No. 95 C 932K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7 day of Feb.

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, CONNIE J. ARELLANO and MANUEL TORRES ARELLANO, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, CONNIE J. ARELLANO, signed a Waiver of Summons on October 27, 1995.

The Court further finds that the Defendant, MANUEL TORRES ARELLANO, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning November 17, 1995 and continuing through December 22, 1995,

NOTE: THIS
BY [illegible] FILED
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT

as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, MANUEL TORRES ARELLANO, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, MANUEL TORRES ARELLANO. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on September 28, 1995; and that the Defendants, CONNIE J. ARELLANO and

MANUEL TORRES ARELLANO, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendants, CONNIE J. ARELLANO and MANUEL TORRES ARELLANO, were granted a Divorce on September 1, 1994, in Tulsa County District Court. The Defendants, CONNIE J. ARELLANO and MANUEL TORRES ARELLANO, are both single unmarried persons.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lot Three (3), Block Three (3), LEWIS TERRACE 2ND
ADDITION, an Addition in Tulsa County, State of
Oklahoma, according to the recorded Plat thereof.**

The Court further finds that on December 29, 1989, the Defendant, CONNIE J. ARELLANO, executed and delivered to FIRST MORTGAGE TRUST CORPORATION d.b.a. First Mortgage Corp., her mortgage note in the amount of \$51,650.00, payable in monthly installments, with interest thereon at the rate of 8.437% per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, CONNIE J. ARELLANO, a single person, executed and delivered to FIRST MORTGAGE TRUST CORPORATION d.b.a. First Mortgage Corp., a mortgage dated December 29, 1989, covering the above-described property. Said mortgage was recorded on January 2, 1990, in Book 5228, Page 1520, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 29, 1989, First Mortgage Trust Corporation d.b.a. First Mortgage Corp., assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on February 5, 1990, in Book 5234, Page 976, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 10, 1991, Mortgage Clearing Corporation, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington D.C., his successors and assigns. This Assignment of Mortgage was recorded on January 14, 1991, in Book 5298, Page 1721, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 1, 1991, the Defendant, CONNIE J. ARELLANO, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on July 1, 1991, October 1, 1991, October 1, 1992, April 1, 1993, and December 1, 1993.

The Court further finds that the Defendant, CONNIE J. ARELLANO, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, CONNIE J. ARELLANO, is indebted to the Plaintiff in the principal sum of \$69,951.54, plus interest at the rate of 8.435 percent per annum from July 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, CONNIE J. ARELLANO and MANUEL TORRES ARELLANO, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, CONNIE J. ARELLANO, in the principal sum of \$69,951.54, plus interest at the rate of 8.435 percent per annum from July 1, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, CONNIE J. ARELLANO, MANUEL TORRES ARELLANO, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, CONNIE J. ARELLANO, to satisfy the money judgment of the

Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 932K

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. HAYNES; GLORIA JEAN
HAYNES; BLAZER FINANCIAL
SERVICES; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

ENTERED ON DOCKET
DATE FEB 08 1996

FILED

FEB 08 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

Civil Case No. 95 C 930K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7 day of February, 1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, JAMES A. HAYNES, GLORIA JEAN HAYNES and BLAZER FINANCIAL SERVICES, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, JAMES A. HAYNES, was served with process a copy of Summons and Complaint on November 15, 1995; that the Defendant, GLORIA JEAN HAYNES, was served with process a copy of Summons and Complaint on November 15, 1995; that the Defendant, BLAZER FINANCIAL SERVICES, was served with process a copy of Summons and Complaint on October 27, 1995.

NOTE: THIS CASE IS NOT TO BE MAILED
BY ANYONE EXCEPT COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on September 28, 1995; that the Defendants, JAMES A. HAYNES, GLORIA JEAN HAYNES and BLAZER FINANCIAL SERVICES, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, are husband and wife.

The Court further finds that on December 18, 1989, James A. Haynes and Gloria Jean Haynes filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-3808-C. On March 27, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor and the case was subsequently closed on May 2, 1990.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South Fifty (50) feet of the North One hundred fifty (150) feet of Lot Fourteen (14), PORTLAND PLACE ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on October 16, 1980, the Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, executed and delivered to HALL INVESTMENT COMPANY, their mortgage note in the amount of \$9,800.00, payable in monthly

installments, with interest thereon at the rate of Eight and One-Half percent (8½ %) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, husband and wife, executed and delivered to HALL INVESTMENT COMPANY a mortgage dated October 16, 1970, covering the above-described property. Said mortgage was recorded on October 19, 1970, in Book 3943, Page 123, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 16, 1970, HALL INVESTMENT COMPANY, assigned the above-described mortgage note and mortgage to HOME FEDERAL SAVINGS AND LOAN ASSOCIATION. This Assignment of Mortgage was recorded on November 19, 1970, in Book 3946, Page 1572, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 19, 1990, SOONER FEDERAL SAVINGS ASSOCIATION BY AND THROUGH ITS CONSERVATOR RESOLUTION TRUST CORPORATION, FEDERAL DEPOSIT INSURANCE CORPORATION AS MANAGING AGENT, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on August 25, 1995, in Book 5739, Page 1787, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 1, 1990, the Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on November 1, 1990, October 1, 1991 and October 1, 1992.

The Court further finds that the Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, are indebted to the Plaintiff in the principal sum of \$6,789.69, plus interest at the rate of 8½ percent per annum from May 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, JAMES A. HAYNES, GLORIA JEAN HAYNES and BLAZER FINANCIAL SERVICES, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, in the principal sum of \$6,789.69, plus interest at the rate of 8½ percent per annum from May 1, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus

any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, JAMES A. HAYNES, GLORIA JEAN HAYNES and BLAZER FINANCIAL SERVICES, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, JAMES A. HAYNES and GLORIA JEAN HAYNES, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right

to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

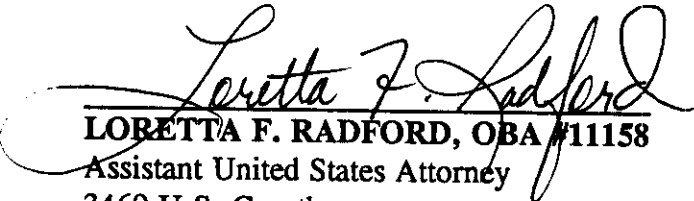
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 930K

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MILDRED N. HARPER; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

ENTERED ON DOCKET

DATE ~~FEB 08 1996~~

FILED

FEB 08 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

Civil Case No. 95 C 1168K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7 day of February 1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendant, MILDRED N. HARPER, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, MILDRED N. HARPER, signed a Waiver of Summons on December 28, 1995.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on December 11, 1995; and the Defendant, MILDRED N. HARPER, has failed to answer and her default has therefore been entered by the Clerk of this Court.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

The Court further finds that the Defendant, MILDRED N. HARPER, is a single unmarried person.

The Court further finds that on December 4, 1994, Mildred N. Harper, filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 93-3987 C. On April 6, 1994, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor and the case was subsequently closed on June 9, 1994.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South Five (5) Feet of Lot Five (5) and all of Lot Six (6), Block Eleven (11), BURGESS HILL ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on February 27, 1984, the Defendant, MILDRED N. HARPER, executed and delivered to CHARLES F. CURRY COMPANY, her mortgage note in the amount of \$55,276.00, payable in monthly installments, with interest thereon at the rate of Twelve and One-Half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, MILDRED N. HARPER, AN UNMARRIED PERSON, executed and delivered to CHARLES F. CURRY COMPANY a mortgage dated February 27, 1984, covering the above-described property. Said mortgage was recorded on March 5, 1984, in Book 4771, Page 1726, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 12, 1990, CHARLES F. CURRY COMPANY, assigned the above-described mortgage note and mortgage to The Secretary of Housing and Urban Development, his successors and/or assigns, c/o Department of Housing and Urban Development. This Assignment of Mortgage was recorded on April 19, 1990, in Book 5248, Page 272, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 1, 1990, the Defendant, MILDRED N. HARPER, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on April 1, 1991, April 1, 1992, October 1, 1992 and April 1, 1993.

The Court further finds that the Defendant, MILDRED N. HARPER, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, MILDRED N. HARPER, is indebted to the Plaintiff in the principal sum of \$79,571.79, plus interest at the rate of 12.5 percent per annum from May 31, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$323.00, plus penalties and interest, for the year of 1995. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, MILDRED N. HARPER, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendant, MILDRED N. HARPER, in the principal sum of \$79,571.79, plus interest at the rate of 12.5 percent per annum from May 31, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$323.00, plus penalties and interest, for ad valorem taxes for the year 1995, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, and MILDRED N. HARPER, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, MILDRED N. HARPER, to satisfy the judgment In Rem of the

Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$323.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ TERRY C. KEENE


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #882
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 1168K

LFR:flv

IN THE UNITED STATES DISTRICT COURT **F I L E D**
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DENISE HENDERSON,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner,
Social Security Administration,

Defendant.

FEB 07 1996

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

Civil Action No. 94-C-24-J

ENTERED ON DOCKET
DATE FEB 03 1996

ORDER

On September 19, 1995, this Court reversed the Commissioner's decision denying plaintiff's claim for Social Security disability benefits and remanded to the Commissioner for an award of benefits. No appeal was taken from this Judgment and the same is now final.

Pursuant to plaintiff's application for attorney under the EAJA, 28 U.S.C. §2412(d), filed on or about December 19, 1995, the parties have stipulated that an award in the amount of \$1,937.25 for attorney fees and expenses for all work done before the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees and expenses under the Equal Access To Justice Act in the amount of \$2,970.05. If attorney fees are also awarded under 42 U.S.C. §406(b)(1) of the Social Security Act, plaintiff's counsel shall refund the smaller award to plaintiff pursuant to Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986). This action is hereby dismissed.

It is so ORDERED THIS 6th day of February 1996.

/s/ JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

~~SAM A. JOYNER~~
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MASSACHUSETTS BAY INSURANCE
COMPANY,

Plaintiff,

vs.

JOSEPH K. LANDRITH, KAREN
LANDRITH, and PIERRE THYSSEN,
individually and d/b/a DATATEK
COMPUTERS, a general partnership;
MICHAEL SUND, an individual;
BOBBY COMPTON, SR., individually
and as personal representative
of the estate of Bobby Compton
Jr.; ARLENE COMPTON, an
individual; MARK A. HUNTER, an
individual; and JACK T. MEDLIN,
personal representative of the
estate of Mark Andrew Medlin,

Defendants.

Case No. 95-C-784-B ✓

FILED
FEB - 7 1996
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE FEB 08 1996

O R D E R

Before the Court are a Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 filed by Defendants Arlene Compton and Bobby Compton Sr., individually and as personal representative of the estate of Bobby Compton Jr. (Docket #9), and a Motion for Summary Judgment filed by Plaintiff Massachusetts Bay Insurance Company ("Mass Bay") (Docket #10).

Plaintiff Mass Bay filed this declaratory judgment action to determine if it is obligated, under an insurance policy issued to Joseph K. Landrith, Karen Landrith, Pierre Thyssen and Datatek Computers, to defend the insureds in a wrongful death lawsuit filed by the Comptons against Datatek. Only the Comptons have

(1)

responded.¹

I. STATEMENT OF UNDISPUTED FACTS

1. A motor vehicle collision occurred on March 16, 1994, at approximately 9:53 p.m., which resulted in the death of Bobby Compton Jr. (Defendants' Ex. A and B)

2. The collision involved a car driven by Defendant Mark Hunter and a car driven by Defendant Michael Sund. Bobby Compton Jr. and Mark Medlin were passengers in the car driven by Hunter, and both Compton and Medlin were killed in the collision. (Defendants' Ex. A)

3. The car driven by Sund was owned by Defendant Joseph K. Landrith. Landrith operates a computer mail order business called Datatek Computers. (Plaintiff's Ex. 1, p. 57, l. 19-25; p. 58, l. 1-8) Sund's car was inoperable, so Landrith had loaned Sund his personal car. (Id. at 61, l. 14-22)

4. At the time of the collision, Michael Sund was an employee of Datatek. (Defendants' Ex. C, p. 59, l. 2-8) Sund had worked for Datatek for two to three months before the collision. (Id. at l. 1-6) Sund's duties primarily involved shipping of packages. As part of his duties, he routinely delivered packages to UPS and/or Federal Express. (Id. at l. 9-25)

5. At the time of the collision, Sund was delivering a package

¹Defendant Jack Medlin filed a disclaimer and was dismissed from this lawsuit on October 16, 1995. Joseph K. Landrith, Karen Landrith, Pierre Thyssen, Datatek Computers, Michael Sund and Mark A. Hunter were served but made no appearance in the case. They did not respond to the Motions for Summary Judgment.

on behalf of Datatek to the Federal Express office located at 73rd Street and Mingo Road. The Federal Express office closed at 9:30 p.m., but regularly accepted late shipments by Sund on behalf of Datatek. (Defendants' Ex. C, p. 60, l. 4, l. 15-19; p. 61, l. 1; and p. 64, l. 21-24)

6. Bobby Compton Sr. was appointed as Personal Representative of the estate of Bobby Compton Jr. on September 30, 1994. (Defendants' Ex. E)

7. Bobby Compton Sr., individually and as personal representative of the estate of Bobby Compton Jr., and Arlene Compton, an individual, sued Michael Sund, Joseph Landrith, Karen Landrith and Datatek Computers, Inc., in Tulsa County District Court on June 20, 1995, seeking actual and punitive damages for the wrongful death of Bobby Compton Jr. (Defendants' Ex. F)

8. The Comptons allege in their state court petition that Michael Sund negligently collided his vehicle into the Dodge Aries in which Bobby Compton Jr. was a passenger and is liable to them for actual and punitive damages due to his negligence. (Defendants' Ex. F)

9. The Comptons allege in their state court petition that Datatek is directly liable to them for the tort of negligent hiring, which caused the death of their son because Datatek failed to conduct a reasonable inquiry into Sund's background to determine if he was fit and proper to undertake the tasks assigned to him by Datatek. (Defendants' Ex. F)

10. The Comptons allege in their state court petition that

Datatek negligently supervised, trained and retained Sund as an employee. (Defendants' Ex. F)

11. If a background search had been conducted, Datatek would have discovered that Sund had approximately eleven motor vehicle traffic violations since February 1986 and has been involved in at least three automobile collisions prior to the collision that killed Bobby Compton Jr. (Defendants' Ex. G)

12. A background search also would have revealed that Sund had been arrested, charged and pleaded guilty to the crimes of second-degree burglary, grand larceny and knowingly concealing stolen property. (Defendants' Ex. H, I, J)

13. In the alternative, the Comptons allege in their state court petition that Datatek, through its general partner Joseph Landrith, had actual knowledge that Sund was not fit and proper to carry out the tasks assigned to him because Joseph Landrith was a personal friend of Sund during the last twelve years, during which Sund had been involved in repeated traffic violations, motor vehicle collisions and a pattern of criminal activity. (Defendants' Ex. C, p. 58, l. 22-24)

14. Joseph K. Landrith and Pierre Thyssen, doing business as Datatek Computers, purchased a policy of liability insurance from Mass Bay bearing policy number ODT-4624588-00, which was in full force and effect on March 16, 1994, the date of the collision. (Defendants' Ex. K)

15. The insuring clause of this policy provides, in pertinent part, as follows:

A. COVERAGES

1. Business Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result.

(Plaintiff's Ex. 4, p. 15)

16. The business liability coverage lists the following as insureds:

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insured, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.

* * *

2. Each of the following is also an insured:

a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you....

(Plaintiff's Ex. 4, p. 20)

17. The business liability coverage contains the following relevant definitions:

"Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including

death resulting from any of these at any time.

"Property damage" means a. Physical injury to tangible property... or b. Loss of use of tangible property that is not physically injured ...

(Plaintiff's Ex. 4, p. 22-23)

18. Mass Bay denied coverage to Datatek by letter dated November 7, 1994, because of the language under part B of the policy, Exclusion 1, which states:

1. This insurance does not apply to:

g. "bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any ... "auto" ... owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

(Plaintiff's Ex. 4, p. 16-17; Defendants' Ex. L)

20. Mass Bay has instituted this declaratory judgment action pursuant to 28 U.S.C. § 2202 to determine whether the damages sought by the Comptons in their wrongful death petition are excluded under the above-cited exclusion. (Defendants' Ex. M)

II. SUMMARY JUDGMENT STANDARD

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Windon Third Oil & Gas v. FDIC*, 805 F.2d 342 (10th Cir. 1986). In *Celotex*, the court

stated:

The plain language of Rule 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

477 U.S. at 317 (1986). To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita v. Zenith*, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. *Conaway v. Smith*, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. *Norton v. Liddel*, 620 F.2d 1375, 1381 (10th Cir. 1980).

The Tenth Circuit Court of Appeals stated:

Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination . . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be "merely colorable" or anything short of "significantly probative."

* * *

A movant is not required to provide evidence negating an opponent's claim . . . [r]ather, the burden is on the nonmovant, who "must present affirmative evidence in order to defeat a properly supported motion for summary judgment." . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even

though the evidence probably is in possession of the movant. (Citations omitted.)

Committee for the First Amendment v. Campbell, 962 F.2d 1517, 1521 (10th Cir. 1992).

II. LEGAL ANALYSIS

The issue before the Court is whether Exclusion 1(g) operates to bar coverage by Mass Bay for the Comptons' claim of negligent hiring alleged against the Landriths and Thyssen. The parties dispute the applicability of Phillips v. Estate of Greenfield, 859 P.2d 1101 (Okla. 1993), which holds that an insurance policy exclusion that covers damage arising from a motor vehicle accident also encompasses a negligent supervision claim.

In Phillips, the passenger on a motorcycle driven by 15-year-old Rocky Greenfield was injured when the motorcycle collided with an automobile. The passenger then sued Rocky's father on a theory of negligent supervision or failure to control Rocky. The father's homeowner's insurance policy included a clause that stated:

1. Coverage L [personal liability] and Coverage M [medical payments to others] do not apply to:

* * *

e. bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of:

* * *

(2) a motor vehicle owned or operated by or rented or loaned to an insured;

The plaintiff argued that the clause did not apply because she

sued on a theory of negligent supervision, in which the defendant was liable due to his own negligent acts. The Oklahoma Supreme Court, however, agreed with the insurance company, which claimed that the policy language clearly excluded coverage because the injuries arose out of the use of a motor vehicle owned and operated by an insured. Id. at 1104.

The Phillips court held that "[r]egardless of the theory of liability alleged...the bodily injury sued for is clearly excluded under the policy language because it is intertwined with the ownership and/or use of the motorcycle". Id. at 1106. The court reasoned that holding that coverage existed

would expand the policy terms beyond those stated and agreed upon by the contracting parties. It would require us to rewrite the clear language of the policy or construe the plain language of the exclusion in a tortured fashion. We believe to take either of these courses would be to negate the reasonable expectations of the parties as expressed in their contract and we refuse to do so.

Id. See also Pierce v. Oklahoma Property and Casualty Ins. Co., 901 P.2d 819 (Okla. 1995) (applying Phillips to deny coverage for a negligent entrustment claim due to a named driver exclusion in the insurance policy).

The Comptons attempt to distinguish Phillips on the following grounds:

1. Phillips involved a claim of negligent supervision while this case involves a claim of negligent hiring;
2. Phillips involves a homeowner's policy while this case involves a business liability policy;

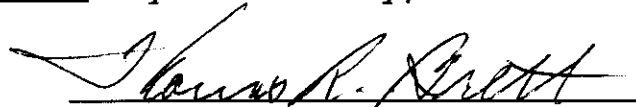
3. Coverage exists because negligent hiring is a "non-excluded concurrent cause"; and

4. Rules of construction dictate that coverage exists as a matter of law.

The Court believes that none of these claims serve to distinguish Phillips from the facts of this case. The reasoning in Phillips does not rely upon the fact that the plaintiff therein was asserting a negligent supervision claim as opposed to some other claim, nor does Phillips turn on whether the policy is a homeowner's policy or a business liability policy. The clear language of Phillips, in Court's opinion, prevents application of the concurrent cause rule, assuming *arguendo* that such rule could otherwise be applied. Further, Phillips states, as cited above, that the "clear" exclusion language (which is virtually identical to that of the exclusion in this case) precludes coverage of actions "intertwined" with motor vehicle use. Id. at 1106. Therefore, converse to the Comptons' position, rules of construction dictate that coverage does not exist.

In summary, the Motion for Summary Judgment filed by the Comptons (Docket #9) is denied. The Motion for Summary Judgment filed by Plaintiff Mass Bay (Docket #10) is granted.

IT IS SO ORDERED this 7th day of February, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MASSACHUSETTS BAY INSURANCE
COMPANY,

Plaintiff,

vs.

Case No. 95-C-784-B ✓

JOSEPH K. LANDRITH, KAREN
LANDRITH, and PIERRE THYSSEN,
individually and d/b/a DATATEK
COMPUTERS, a general partnership;
MICHAEL SUND, an individual;
BOBBY COMPTON, SR., individually
and as personal representative
of the estate of Bobby Compton
Jr.; ARLENE COMPTON, an
individual; MARK A. HUNTER, an
individual; and JACK T. MEDLIN,
personal representative of the
estate of Mark Andrew Medlin,

Defendants.

FILED

FEB - 7 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

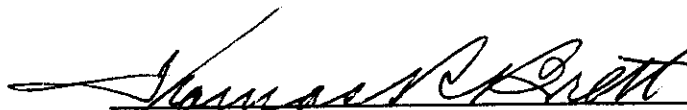
DATE FEB 0 8 1996

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, Massachusetts Bay Insurance Company, and against the Defendants, Joseph K. Landrith, Karen Landrith, and Pierre Thyssen, individually and d/b/a Datatek Computers, a general partnership; Michael Sund, an individual; Bobby Compton Sr., individually and as personal representative of the estate of Bobby Compton Jr.; Arlene Compton, an individual; Mark A. Hunter, an individual; and Jack T. Medlin, personal representative of the estate of Mark Andrew Medlin. Costs are assessed against the Defendants, if timely applied for under Local

Rule 54.1, and each party is to pay its respective attorney's fees.

Dated, this 7th day of February, 1996.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

FEB - 7 1996

CHRIS R. BRUNER,

Plaintiff,

vs.

DEPARTMENT OF HUMAN SERVICES,

Defendant.

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

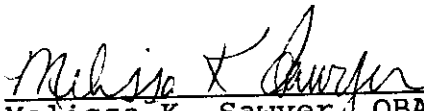
No. 95-C-1-K

ENTERED ON DOCKET


DATE FEB 08 1996

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41 of the F.R.C.P., Plaintiff Chris R. Bruner and Defendant Department of Human Services stipulate that the above captioned proceeding be dismissed without prejudice, with each party to bear its own costs and attorney fees.


Melissa K. Sawyer OBA #14855
Oklahoma Disability Law Center, Inc.
4150 S. 100th East Avenue
Cherokee Building, Suite 210
Tulsa, OK 74146
(918) 664-5883

Attorney for Plaintiff


Richard A. Resetaritz OBA #7510
Assistant General Counsel
Department of Human Services
P.O. Box 53025
Oklahoma City, OK 73152-3025
(405) 521-3638

Attorney for Defendant

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB - 7 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DANIEL and JAMIE SWANSON, Individually)
and as Parents and Next Friends of)
the Minor Child, JEREMY SWANSON,)

v.)

Plaintiff,)

CHRYSLER CORPORATION,)

Defendant.)

Case No. 95-C-638K

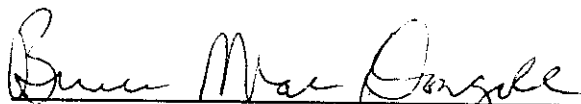
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DATE FEB 08 1996

STIPULATION OF DISMISSAL WITH PREJUDICE

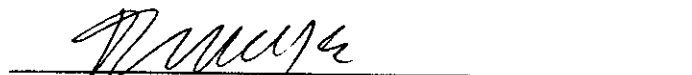
COME NOW the parties and hereby stipulate to the Dismissal
with Prejudice of the above styled and numbered cause.

Respectfully submitted,
LAW OFFICES OF ROBERT B. SMITH



Robert B. Smith, OBA #8396
Bruce MacDougall, OBA #12384
105 N. Hudson, Suite 201
Oklahoma City, Ok. 73102
(405) 232-9644
ATTORNEYS FOR PLAINTIFF

PHILLIPS MCFALL MCCAFFREY MCVAY &
MURRAH, P.C.


A. Paul Murrah, Jr.,
Thomas G. Wolfe
12th Floor - One Leadership Square,
211 North Robinson
Oklahoma City, Ok. 73102
(405) 235-4100
ATTORNEYS FOR DEFENDANT

Handwritten note: 1/11/96

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE FEB 08 1996

LEONARD RENAL ROBERTS,

Petitioner,

vs.

RON CHAMPION,

Respondent.

No. 94-C-690-K

FILED

FEB 07 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

ORDER

Before the Court is Petitioner's notice of appeal filed on December 22, 1995. Petitioner desires to appeal the decision and order of this Court denying grounds Two, Three, Four, Eight, Nine, and Ten of his petition for a writ of habeas corpus.¹ Petitioner is proceeding in forma pauperis.

28 U.S.C. § 2253 requires a petitioner to obtain a certificate of probable cause before appealing a final order in a habeas corpus proceeding under 28 U.S.C. § 2254. To receive a certificate of probable cause, a petitioner must "make a `substantial showing of the denial of [a] federal right.'" Lozada v. Deeds, 498 U.S. 430, 431 (1991) (per curiam) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). A petitioner can satisfy this standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Barefoot, 463 U.S. at 893. The Tenth Circuit applies the same standard. See Gallagher v.

¹ The Court has yet to issue a ruling as to grounds One, Five, Six, and Seven of the petition.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Z. DANNY DAVIS aka Danny Davis;
DENISE DAVIS; STATE OF
OKLAHOMA, ex rel. OKLAHOMA
EMPLOYMENT SECURITY
COMMISSION; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

ENTERED ON DOCKET

DATE FEB 08 1996

FILED

FEB 07 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

Civil Case No. 95-C-0060-K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7th day of February,

1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendants, Z. DANNY DAVIS aka Danny Davis and DENISE DAVIS, appear not; and the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, appear not having previously filed a Disclaimer.

The Court being fully advised and having examined the court file finds that the Defendants, Z. DANNY DAVIS aka Danny Davis and DENISE DAVIS, were each served with process a copy of Summons and Complaint on March 1, 1995; that the Defendant,

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, was served a copy of Summons and Complaint on January 23, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on February 9, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, filed its Disclaimer on February 6, 1995; and that the Defendants, Z. DANNY DAVIS aka Danny Davis and DENISE DAVIS, filed their Advise of Bankruptcy and Notice of Automatic Stay, on August 3, 1995.

The Court further finds that on February 28, 1995, Zebedee Danny Davis aka Danny Davis and Ophelia Denise Davis, filed their voluntary petition in bankruptcy in Chapter 13 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 95-00548-C. On August 22, 1995, the United States Bankruptcy Court for the Northern District of Oklahoma Dismissed the case.

The Court further finds that the Defendant, Z. DANNY DAVIS, is one and the same person as Danny Davis and Zebedee Danny Davis, and will hereinafter be referred to as "Z. DANNY DAVIS." The Defendant, DENISE DAVIS, is one and the same person as Ophelia Denise Davis, and will hereinafter be referred to as "DENISE DAVIS." The Defendants, Z. DANNY DAVIS and DENISE DAVIS, are husband and wife.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described

real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Sixteen (16), Block Thirteen (13), CHEROKEE VILLAGE SECOND an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on July 17, 1980, Don V. Miller and Janet S. Miller, executed and delivered to CHARLES F. CURRY COMPANY, their mortgage note in the amount of \$42,700.00, payable in monthly installments, with interest thereon at the rate of Eleven and One-Half percent (11½ %) per annum.

The Court further finds that as security for the payment of the above-described note, Don V. Miller and Janet S. Miller, Husband and Wife, executed and delivered to CHARLES F. CURRY COMPANY, a mortgage dated July 17, 1980, covering the above-described property. Said mortgage was recorded on July 21, 1980, in Book 4485, Page 1073, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 10, 1990, Charles F. Curry Company, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development. This Assignment of Mortgage was recorded on January 23, 1990, in Book 5232, Page 896, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 22, 1985, Don V. Miller and Janet S. Miller, Husband and wife, granted a general warranty deed to Earl M. Beard and Diana Sue Beard, Husband and Wife. This deed was recorded with the Tulsa County Clerk on August 29, 1985, in Book 4888 at Page 771 and Earl M. Beard and Diana Sue Beard, husband and wife, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on March 31, 1989, Earl M. Beard and Diana Sue Beard, Husband and Wife, granted a general warranty deed to Z. Danny Davis and Denise Davis, Husband and Wife. This deed was recorded with the Tulsa County Clerk on April 4, 1989, in Book 5175 at Page 2419 and the Defendants, Z. DANNY DAVIS and DENISE DAVIS, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on January 14, 1991, the Defendants, Z. DANNY DAVIS and DENISE DAVIS, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on January 1, 1992, June 18, 1992, October 15, 1992, and December 30, 1993.

The Court further finds that the Defendants, Z. DANNY DAVIS and DENISE DAVIS, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Z. DANNY DAVIS and DENISE DAVIS, are indebted to the Plaintiff in the principal sum of \$62,616.05, plus interest at the rate of 11½ percent per annum from January 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$22.00 which became a lien on the property

as of June 25, 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, disclaims any right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, Z. DANNY DAVIS and DENISE DAVIS, in the principal sum of \$62,616.05, plus interest at the rate of 11½ percent per annum from January 1, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$22.00, plus costs and interest, for personal property taxes for the year 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, Z. DANNY DAVIS and DENISE DAVIS, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Z. DANNY DAVIS and DENISE DAVIS, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$22.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

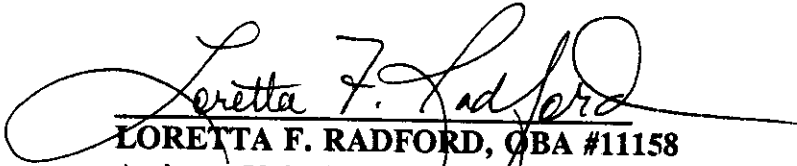
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C-0022-K

LFR:flv

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

MICHAEL HENRY MARTIN,

Plaintiff,

v.

TULSA COUNTY COMMISSIONERS, et al.,

Defendants.

Case No. 94-C-193-H ✓

ENTERED ON DOCKET

DATE 2-7-96

ORDER

Before the Court for consideration is the Report and Recommendation of United States Magistrate Judge (Docket #49) regarding Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (Docket #44); Defendants' Combined Objection to the Report and Recommendation (Docket #51); and Plaintiff's Combined Response to Defendants' Objection (Docket #52).

When a party objects to the report and recommendation of a Magistrate Judge, Rule 72(b) of the Federal Rules of Civil Procedure provides in pertinent part that:

[t]he district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

The Magistrate Judge recommended that the Court deny Defendants' Motion for Summary Judgment because material questions of fact exist as to whether deliberate indifference to Plaintiff's medical needs was shown and whether budgetary considerations

resulted in an intentional delay of his treatment, thus causing Plaintiff unnecessary suffering. The Court declines to adopt the recommendation of the Magistrate Judge denying summary judgment.

Summary judgment is appropriate where "there is no genuine issue as to any material fact," Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Windon Third Oil & Gas Drilling Partnership v. Federal Deposit Insurance Corp., 805 F.2d 342, 345 (10th Cir. 1986), cert. denied, 480 U.S. 947 (1987), and "the moving party is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(c). In Celotex, the Supreme Court stated:

"[t]he plain language of Rule 56 © mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

477 U.S. at 322.

A party opposing a properly supported motion for summary judgment must offer evidence, in admissible form, of specific facts, Fed. R. Civ. P. 56(e), sufficient to raise a "genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In Anderson, the Supreme Court stated:

"[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."

477 U.S. at 252. Thus, to defeat a summary judgment motion, the nonmovant "must do more than simply show that there is some

metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

To set forth a cause of action under Section 1983, Plaintiff must show that the conduct complained of was committed by a person acting under color of state law and that this conduct deprived Plaintiff of some right, privilege, or immunity secured by the Constitution or laws of the United States. Gunkel v. City of Emporia, 835 F.2d 1302, 1303 (10th Cir. 1987).

The Eighth Amendment proscribes "cruel and unusual punishments." The Supreme Court has determined that "deliberate indifference to serious medical needs of prisoners" resulting in substantial harm falls within the Eighth Amendment proscription. Estelle v. Gamble, 429 U.S. 97, 104 (1976), reh'g denied, 429 U.S. 1066 (1977); Olson v. Stotts, 9 F.3d 1475, 1477 (10th Cir. 1993). Thus, the Court analyzes Plaintiff's claim of inadequate medical treatment under the test set out in Estelle. See id. This test has both an objective component requiring that the pain or deprivation was sufficiently serious and a subjective component requiring that the offending officials acted with a sufficiently culpable state of mind. Wilson v. Seiter, 111 S. Ct. 2321, 2324 (1991). The Tenth Circuit has held that a delay in medical care can constitute a claim if the delay results in "substantial harm." Olson v. Stotts, 9 F.3d 1475, 1477 (10th Cir. 1993) (citation omitted).

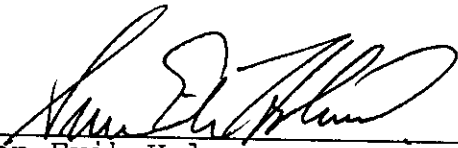
Defendants attach to their motion for summary judgment the Affidavit of Doctor Steven Sullivan, D.D.S. Dr. Sullivan states that "any delay of Mr. Martin's surgery even of several months would have had no impact whatsoever on his present condition." Dr. Sullivan further notes that "[s]urgery would have been performed at the Oklahoma Memorial Hospital sooner; however, Mr. Martin refused to agree to have the surgery."

Plaintiff does not controvert Defendants' contention that he suffered no harm through the delay in medical treatment. At his deposition, Plaintiff asserted that Dr. Woodward, the physician treating him while he was incarcerated at Tulsa County Jail, impressed upon him the importance of having surgery quickly. However, Plaintiff does not submit an affidavit or deposition testimony from Dr. Woodward in support of this assertion. Standing alone, and in the face of the testimony of Dr. Sullivan, Plaintiff's bare assertion does not establish even a question of fact as to whether he was harmed by the delay in treatment. Therefore, under the legal standard set forth above, Plaintiff's claim must fail.

In conclusion, the Court does not adopt the Report and Recommendation of the Magistrate Judge. Summary judgment is hereby granted to Defendants.

IT IS SO ORDERED.

This 5TH day of February, 1996.



Sven Erik Holmes
United States District Judge.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEB 6 1996

MICHAEL HENRY MARTIN,

Plaintiff,

v.

TULSA COUNTY COMMISSIONERS, et al.,

Defendants.

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 94-C-193-H ✓

ENTERED ON DOCKET

DATE 2-7-96


J U D G M E N T

This matter came before the Court on a Motion for Summary Judgment by Defendants. The Court duly considered the issues and rendered a decision in accordance with the order filed on February 6, 1996.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for the Defendants and against the Plaintiff.

IT IS SO ORDERED.

This 6TH day of FEBRUARY 1996.


Sven Erik Holmes
United States District Judge

FILED ON DOCKET

2-7-96

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 95-C-0050-H ✓

COMPUTRONICS CONSULTANTS, INC.,)
)
Plaintiff,)
)
v.)
)
NeXT COMPUTER, INC.,)
)
Defendant,)
)
NeXT COMPUTER, INC.,)
)
Counterclaimant,)
)
v.)
)
COMPUTRONICS CONSULTANTS, INC.,)
)
Counterclaim Defendant.)

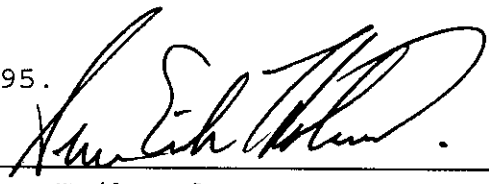
J U D G M E N T

This matter came before the Court on a motion for summary judgment by Defendant. The Court duly considered the issues and rendered a decision in accordance with the order filed on December 8, 1995.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for the Defendant and against the Plaintiff in the total amount of \$369,235.39, which amount consists of \$156,562.00, the principal amount of the unpaid invoices; \$57,544.00, pre-judgment interest on the unpaid invoices as provided in the parties' contract; and \$155,129.39 for reasonable attorneys' fees and costs.

IT IS SO ORDERED.

This 5TH day of February, 1995.


Sven Erik Holmes
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

In re WEBCO SECURITIES LITIGATION

Case No. 94-C-813-H
Class Action

ENTERED ON DOCKET

FE 2-7-96

ORDER AWARDING PLAINTIFFS' COUNSEL'S
FEES AND EXPENSES

This matter having come before the Court on September 21, 1995 on the application of counsel for the plaintiffs for an award of attorneys' fees and reimbursement of expenses incurred in the action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefor, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meaning as set forth in the Stipulation of Settlement ("Stipulation") dated as of June 7, 1995.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the certified class who have not timely and validly requested exclusion.

3. The Court hereby awards Representative Plaintiffs' counsel attorneys' fees of \$958,969.00 and unreimbursed expenses of \$114,423.00 together with the interest earned thereon for the same time period and at the same rate as that earned on the Class

Settlement Fund until paid. The Declaration of Stephen Rodd in Support of Plaintiffs' Joint Application for Approval of Proposed Settlement, an Award of Attorneys' Fees and Reimbursement of Expenses demonstrates that 1,538.97 attorney hours have been expended to date in the prosecution of this action. The resulting lodestar for plaintiffs' counsel is \$383,587.57. The fee requested, \$1,020,000 (30% of the Settlement Fund), constitutes a 2.66 multiplier of counsel's lodestar. Under the rationales set forth in Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983) and In re First Fidelity Bancorporation Securities Litigation, the Court concludes that the application of a 2.5 multiplier to counsel's lodestar is fair and reasonable.

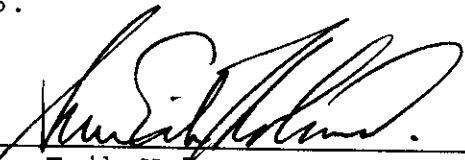
4. The fees and expenses shall be allocated among Representative Plaintiffs' counsel by Plaintiffs' Settlement Counsel in a manner which, in Plaintiffs' Settlement Counsel's good faith judgment, reflects each such Representative Plaintiffs' counsel's contribution to the institution, prosecution and resolution of the Litigation.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Plaintiffs' Settlement Counsel within five business days after the date this Order is entered subject to the terms, conditions and obligations of the Stipulation

and in particular Section 8 thereof which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

This 5TH day of February, 1996.


Sven Erik Holmes
United States District Judge

ENTERED ON DOCKET

DATE

2-7-96

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

In re WEBCO SECURITIES LITIGATION

) Master File No.
) 94-C-813-H
)

CLASS ACTION

DATE: September 21, 1995

TIME: 9:30 a.m.

COURTROOM: The Honorable
Sven E. Holmes

~~[PROPOSED]~~ FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE

This matter having come before the Court for hearing, pursuant to the Order of this Court, dated June 28, 1995 on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement, dated as of June 7, 1995 ("Stipulation"), and due and adequate notice having been given to the Settlement Class defined below as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment hereby incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. As used in this Judgment, the following terms have the meanings specified below:

a. "Defendants" means Webco Industries, Inc., F. William Weber, Dana S. Weber, John M. Lare, Frederick C. Ermel, N.C. Hulsey, Kidder, Peabody & Company, Inc., and Dean Witter Reynolds, Inc.

b. "Related Parties" means (i) each of a Defendant's or Underwriter's insurers, co-insurers, controlling persons, attorneys, counsel, accountants, auditors, banks or investment bankers, advisors, consultants, independent contractors, parents, subsidiaries, divisions, joint ventures, associates, or related or affiliated entities, any entity in which a Defendant or Underwriter has a controlling interest, or any trust of which any Defendant or Underwriter or any member of his or her family is the settlor or trustee or which is for the benefit of any of the foregoing; (ii)

each of the past or present directors, officers, employees, partners, principals, or agents of the Defendants or Underwriters or of any of the foregoing; and (iii) each of the personal or legal representatives, predecessors, successors, assigns, spouses, or heirs of the Defendants or Underwriters or of any of the foregoing, or any members of their immediate families.

c. "Underwriter" means each and every member of the syndicate of underwriters who participated in Webco's initial public offering, as reflected in Webco's Prospectus dated February 8, 1994, at page 42.

d. "Released Persons" means each and all of the Defendants, the Underwriters and each and all of their respective Related Parties.

3. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all members of the Settlement Class.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the settlement set forth in the Stipulation and finds that said settlement is, in all respects, fair, reasonable and adequate to the Settlement Class.

5. This Court hereby dismisses on the merits and with prejudice and without costs (except as otherwise provided in the Stipulation) the Litigation against the Defendants.

6. The Court finds that the settlement set forth in the Stipulation is fair and equitable to the Settlement Class and the Defendants, and the parties to the Stipulation are hereby directed to perform its terms.

7. Upon the Effective Date hereof, each and every Released Claim of each and every named plaintiff and Settlement Class Member, whether or not such Settlement Class Member has filed a Proof of Claim and Release, are and shall be deemed to be conclusively released as against the Released Persons. "Released Claims" means and includes any and all claims or causes of action, including "Unknown Claims," demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, including, without limitation, claims for negligence, gross negligence, breach of duty of care and/or breach of duty of loyalty, fraud, breach of fiduciary duty, or violations of any state or federal statutes, rules or regulations, that have been or could have been asserted in the Litigation by the Representative Plaintiffs or the Settlement Class Members, or any of them, against the Released Persons based upon, arising from, or related to both the purchase or sale of Webco common stock by the Representative Plaintiffs or a Settlement Class Member and facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were or could have been alleged in the Litigation.

8. All Settlement Class Members are hereby forever barred and enjoined from prosecuting the Released Claims against the Released Persons.

9. Upon the Effective Date hereto, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Settlement Class Members and counsel to the Representative Plaintiffs from all claims (including

"Unknown Claims"), arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Litigation or the Released Claims.

10. The Notice of Pendency and Settlement of Class Action given to the Settlement Class was the best notice practicable under the circumstances, including the individual notice to all members of the Settlement Class who could be identified through reasonable effort. Said notice provided due and adequate notice of those proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation, to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

11. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, costs, interest and expenses (including fees and costs of experts and/or consultants) in the Litigation; and (d) all parties hereto for the purpose of enforcing and administering the Stipulation.

12. In the event that the settlement does not become effective in accordance with the terms of the Stipulation or in the event that the Settlement Fund, or any portion thereof, is returned to Webco, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases

delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: *February 5, 1996*

S/ SVEN ERIK HOLMES

THE HONORABLE SVEN E. HOLMES
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE 2-7-96

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

In re WEBCO SECURITIES LITIGATION) Master File No.
) 94-C-813-H
)

CLASS ACTION

DATE: September 21, 1995
TIME: 9:30 a.m.
COURTROOM: The Honorable
Sven E. Holmes

~~[PROPOSED]~~ ORDER APPROVING PLAN OF ALLOCATION

This matter having come before the Court on Representative Plaintiffs' application for approval of the Plan of Allocation of class action settlement proceeds in the above-captioned action; the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. For purposes of this Order, the terms used herein shall have the meanings set forth in the Stipulation of Settlement dated as of June 7, 1995.

2. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finds and concludes that due and adequate notice was directed to all persons and entities who are Settlement Class Members, advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all persons and entities who are Settlement Class Members to be heard with respect to the Plan of Allocation. No one has objected to the plan of allocation.

3. The Court hereby finds and concludes that the formula for the calculation of the Claims of Authorized Claimants which is set forth in the Notice of Pendency and Settlement of Class Action ("Notice") sent to Settlement Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Settlement Fund established by the Stipulation among the Settlement Class Members, with due consideration having been given to fairness, administrative convenience and necessity. This Court hereby finds and concludes that the Plan of Allocation described in

the Notice is, in all respects, fair and reasonable and the Court hereby approves the Plan of Allocation.

IT IS SO ORDERED.

DATED: February 5, 1996

S/ SVEN ERIK HOLMES

THE HONORABLE SVEN E. HOLMES
UNITED STATES DISTRICT JUDGE

56H-1

FILED

FEB -5 1996

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BLUE CIRCLE CEMENT, INC.,

Plaintiff - Appellee,

v.

BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF ROGERS,

Defendant - Appellant.

EDD 2-7-96

No. 95-5134
(D.C. No. 91-C-635-H)

a true copy

Teste

I, Patrick Fisher,
Clerk of
the Tenth Circuit,

E.

[Signature]
Deputy Clerk

ORDER

In accordance with Rule 33.1, Rules of the Tenth Circuit, and upon consideration of the stipulation of the parties to voluntarily dismiss this appeal,

IT IS ORDERED that the above appeal be and it hereby is dismissed pursuant to Rule 42(b), Federal Rules of Appellate Procedure. Each party shall bear its own costs. A certified copy of this order shall stand as and for the mandate of the court.

Entered for the Court

PATRICK FISHER, Clerk

by:

[Signature]
Deputy Clerk

77

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

LOU ELLA SEYMORE,

Plaintiff,

vs.

SHAWVER & SON ELECTRIC AND
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION NO. 584,

Defendants.

Case No. 94-C-95 H

ENTERED ON DOCKET
DATE FEB 07 1996

**ORDER SUSTAINING MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION NO. 584**

NOW on this 8th day of December, 1995, comes now before the Court, the Motion for Summary Judgment and Brief in Support of filed herein by International Brotherhood of Electrical Workers, Local Union No. 584.

The Court, having examined said Motion and Brief in Support of and Response by Plaintiff, finds that for good cause shown said Motion should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Motion for Summary Judgment filed herein by Defendant International Brotherhood of Electrical Workers, Local Union No. 584 be and the same is hereby sustained and the above-captioned action dismissed as against Defendant International Brotherhood of Electrical Workers, Local Union No. 584.

DATED THIS 5th DAY OF February, 1996.

S/ SVEN ERIK HOLMES

SVEN ERIK HOLMES
UNITED STATES DISTRICT COURT

This Order Sent To All Counsel.

DATE 2-7-96

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BEACHNER CONSTRUCTION CO., INC.,)
)
Plaintiff,)
)
vs.)
)
KEYSTONE SERVICES, INC. and)
MID-CONTINENT CASUALTY CO.,)
)
Defendants.)

FILE

FEB - 6 1996

By M. Lawrence, Court Clerk

Case No. 95-C-1019H

DISMISSAL WITHOUT PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiff Beachner Construction Co., Inc. hereby dismisses the above styled action without prejudice. Fed. R. Civ. P. 41(a)(1) is applicable hereto for the reason that the Defendants Keystone Services, Inc. and Mid-Continent Casualty Co. have not filed an Answer or a Motion for Summary Judgment.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By: JLUX
Donald L. Kahl, OBA #4855
T. Lane Wilson, OBA #16343
320 South Boston Avenue
Suite 400
Tulsa, Oklahoma 74103-3708
(918) 594-0400

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES ALEXANDER, JR.,

Plaintiff,

v.

No. 94-C-199H ✓

BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF TULSA, OKLAHOMA,
COMMISSIONER LEWIS HARRIS,
COMMISSIONER JOHN SELPH,
COMMISSIONER MEL RICE, TULSA
COUNTY EMERGENCY SHELTER
SUPERVISORY STAFF (1982-1987),
NORMA ARNOLD, LLOYD CUNNINGHAM,
TERRY TALLENT, CLAY EDWARDS,

Defendants.

FILED

FEB 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

REPORT AND RECOMMENDATION

Defendants, Board of County Commissioners of Tulsa County, Lewis Harris, John Selph, Mel Rice, and Terry Tallent, filed a Motion to Dismiss Plaintiff's action on April 11, 1994. [Doc. No. 3-1]. Defendant Norma Arnold filed a Motion to Dismiss Plaintiff's action based on the same grounds¹, on May 13, 1994. [Doc. No. 7-1]. By minute order dated October 31, 1995, the District Court referred the Motions to Dismiss for Report and Recommendation. [Doc. No. 27-1]. For the reasons discussed below, the United States Magistrate Judge recommends that Defendants' Motions to Dismiss be granted.

¹ Defendant Arnold filed the same brief previously filed by the other Defendants.

I. SUMMARY OF PROCEDURAL HISTORY & FACTS

"CASE 559" IN THE NORTHERN DISTRICT OF OKLAHOMA

On July 13, 1990, Plaintiff filed an action against the Tulsa County Emergency Shelter (Case No. 90-C-559E, in the Northern District of Oklahoma, hereafter "Case 559"). [Case 559, Doc. No. 3]. Plaintiff alleged Defendant violated Title VII of the Civil Rights Act of 1964 by discriminating against Plaintiff because of his race. On July 10, 1991, Plaintiff made application to the court for entry of a default judgment due to Defendant's failure to file an answer. [Case 559, Doc. No. 5]. Defendant filed a Motion to Dismiss (with a supporting brief) on August 12, 1991. [Case 559, Doc. No. 8]. Defendant filed a Motion for Summary Judgment (with a supporting brief) on January 31, 1992. [Case 559, Doc. No. 16]. Attached to Defendant's Brief, as Exhibit III, is a "right-to-sue" letter from the Equal Employment Opportunity Commission ("EEOC") regarding James Alexander, Jr. and the Tulsa County Emergency Shelter, dated April 9, 1990. [Case 559, Doc. No. 16, Exhibit III]. The EEOC concludes "that the evidence obtained during the investigation does not establish violations of the statutes." In addition, the letter notified Plaintiff that

This determination concludes EEOC's processing of the subject charge. As the charge alleged a Title VII violation, this is notice that if the Charging Party wishes to pursue this matter further, he/she may do so by filing a private action in U.S. District Court against the Respondent(s) named above within 90 days of receipt of this Determination. Once this 90-day period is over the right to sue will be lost. Filing this notice is not sufficient. A court complaint must contain a short statement of the facts of this case which shows that the aggrieved party is entitled to relief.

[Case 559, Doc. No. 16, Exhibit III]. On February 11, 1992, the court held a pretrial conference. The conference was set for 9:00 a.m., and when Plaintiff did not appear (by 9:45 a.m.), the court granted Defendant's Motion to Dismiss for failure to state a claim. [Case 559, Minute Order]. By order dated March 6, 1992, Case 559 was dismissed without prejudice.² [Case 559, Doc. No. 17].

THE CURRENT ACTION

On March 4, 1994, Plaintiff filed this present action. Plaintiff's "complaint" is a copy of the same document which was attached to Plaintiff's "complaint" in Case 559. [Doc. No. 1]. Plaintiff alleges that Defendants discriminated against him, in his employment, based on Plaintiff's race. Plaintiff's complaint, is "dated" April 9, 1989, and references conduct from 1986 and 1987.

Defendants Board of County Commissioners of the County of Tulsa, Commissioner Lewis Harris, Commissioner John Selph, Mel Rice, and Terry Tallent, on April 11, 1994 filed a Motion to Dismiss and brief in support. [Doc. No. 3-1]. Defendant Norma Arnold filed the same Motion to Dismiss and brief in support on May 13, 1994. [Doc. No. 7-1]. Defendants assert that Plaintiff's claim is barred by the applicable statute of limitations and because Plaintiff has failed to state a claim.

Plaintiff filed a response to the Motion to Dismiss on September 2, 1994. [Doc. No. 10]. Plaintiff asserts that the court has jurisdiction because the complaint alleges

² Defendants' argument that the dismissal of Case 559 bars consideration of Plaintiff's current complaint is without merit since Plaintiff's complaint was dismissed without prejudice.

a violation of Title VII, and "by virtue of the First Amendment laws." [Plaintiff's Response, Doc. No. 10, p. 1].

II. TITLE VII CLAIM

STATUTE OF LIMITATIONS

Claims brought under 42 U.S.C. §§ 2000e et seq. are generally referred to as "Title VII" claims. Title VII has specific provisions governing the filing of actions.

If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, government agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days

after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. . . .

42 U.S.C.A. West 1994, § 2000e-5 (emphasis added).

Plaintiff acknowledges filing a complaint with the EEOC sometime in 1987. [Doc. No. 10, Plaintiff's Brief at 2]. Plaintiff also acknowledges receipt from the EEOC of a right-to-sue letter. [Doc. No. 10, Plaintiff's Brief at 2]. Based on the right-to-sue letter, Plaintiff filed suit in federal court (Case 559) on July 19, 1990. [Case 559, Doc. No. 3].

The only right-to-sue letter in the Case 559 file is attached to Defendants' Brief in Support for Summary Judgment, and is dated April 9, 1990. The letter outlines the conclusion of the EEOC investigation, and informs Plaintiff of his right to sue, emphasizing that any action **must be brought within 90 days of receipt** of the letter. [Case 559, Doc. No. 16, Exhibit III]. Plaintiff's first action, Case 559, was filed July 19, 1990, which was, presumably, within 90 days of Plaintiff's receipt of the EEOC letter.

Case 559 was dismissed without prejudice on March 9, 1992. Plaintiff's present action was not filed until March 4, 1994. [Doc. No. 1]. Certainly, Plaintiff's current action does not fall within the statute of limitations imposed by 42 U.S.C. § 2000e-5. However, the remaining issue is whether Plaintiff's present action is in

some way timely since Plaintiff previously filed a "timely" action which was dismissed without prejudice. This issue is not addressed by the parties in their briefs, but has been answered by this Circuit.

In Brown v. Hartshorne Public School District #1, 926 F.2d 959 (10th Cir. 1991), the Tenth Circuit Court of Appeals addressed the tolling of a statute of limitation after a voluntary dismissal without prejudice.

Title VII requires that a plaintiff bring a judicial action within ninety days of receipt of a right-to-sue letter. It is hornbook law that, as a general rule, a voluntary dismissal without prejudice leaves the parties as though the action had never been brought. In the absence of a statute to the contrary, the limitation period is not tolled during the pendency of the dismissed action. Courts have specifically held that the filing of a complaint that is dismissed without prejudice does not toll the statutory filing period of Title VII.

[Plaintiff] argues that her filing of the most recent action was nonetheless timely through application of Oklahoma's saving statute. When Congress has provided a federal statute of limitation for a federal claim, however, state tolling and saving provisions are not applicable.

Id. at 961 (citations omitted).

The plaintiff in Brown, voluntarily dismissed her initial action. In this case, Case 559 was dismissed by the court. However, courts have found no distinction between the effect of a voluntary versus an involuntary dismissal on the tolling of a statute of limitation--the statutory filing period under Title VII is not tolled by the filing (and subsequent dismissal) of the initial complaint. See e.g. Price v. Digital Equip. Corp., 846 F.2d 1026, 1027 (5th Cir. 1988); Wilson v. Grumman Ohio Corp., 815 F.2d 26, 28 (6th Cir. 1987); *cited with approval in* Brown v. Hartshorne Public School District

#1, 926 F.2d 959 (10th Cir. 1991). Consequently, Plaintiff's Title VII action is not timely.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Plaintiff's filing with the EEOC named only the Tulsa County Emergency Shelter as respondent. However, Plaintiff brought this action against not only the Tulsa County Emergency Shelter, but also against additional parties. As discussed above, the statute of limitations bars any action by Plaintiff against the Tulsa County Emergency Shelter. Arguably, however, the ninety day statute of limitations would not bar Plaintiff's complaint against the remaining parties because Plaintiff never received a right-to-sue letter from the EEOC addressing the other parties (since Plaintiff did not include the other parties in his complaint to the EEOC). However, to the extent Plaintiff's complaint is not barred by the statute of limitations, it is prohibited because Plaintiff failed to properly exhaust his administrative remedies prior to filing.

To bring a Title VII cause of action, an employee must file a discrimination charge with the state agency within 300 days after the alleged discriminatory act occurred. 42 U.S.C. § 2000e-5(e). An aggrieved employee may not maintain a Title VII suit in federal court unless the employee has "pursued [these] avenues of potential administrative relief." Love v. Pullman Co., 404 U.S. 522, 523, 92 S. Ct. 616, 617, 30 L. Ed. 2d 679 (1972).

Bolden v. PRC Inc., 43 F.3d 545, 552 (10th Cir. 1994).

III. SECTION 1983

Plaintiff also alleges, in his Brief, that Defendants violated his "First Amendment rights."³ To the extent that Plaintiff's allegations allege a colorable claim,⁴ the appropriate mechanism for asserting such a claim is provided by Section 1983.⁵

Section 1983 provides:

Every person⁶ who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

Section 1983 provides no express statute of limitations provision. "When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." Wilson v. Garcia, 471 U.S. 261, 266-67 (1985).

³ Arguably, Plaintiff may be asserting a violation of his "right to privacy." However, to the extent that Plaintiff's assertions could be a recognizable federal cause of action, Plaintiff's claim would be governed by § 1983.

⁴ The court has not undertaken an analysis of Plaintiff's claims based on the merits. For the purposes of the court's discussion of the statute of limitations, the court assumes Plaintiff would be able to assert a colorable claim.

⁵ See e.g. Wilson v. Garcia, 471 U.S. 261, 272 (1985) ("A catalog of other constitutional claims that have been alleged under § 1983 would encompass numerous and diverse topics and subtopics: [including] discrimination in public employment on the basis of race or the exercise of First Amendment rights . . .").

⁶ Political subdivisions are defined as "persons." Monnell v. New York City Dept. of Social Services, 436 U.S. 658 (1977). See also Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 372 n.12 (1978).

The Tenth Circuit has held, with respect to § 1983 actions, that the "most analogous statute of limitations in Oklahoma is the two-year provision on claims for 'injury to the rights of another, not arising on contract, and not hereinafter enumerated.'" Maeve v. Grubbs, 841 F.2d 1512, 1524 (1988), referring to 12 O.S. § 95(3). Consequently, Plaintiff's claim, to be timely, must be filed within two years "after the cause of action accrued." See 12 O.S. 1991, § 95.

Plaintiff's complaint generally references conduct from 1986 and 1987, and is "dated" April 9, 1989. Consequently, giving every benefit of the doubt to Plaintiff, and assuming December 1989 as the date the cause of action "accrued," Plaintiff was required to file his action prior to December 1991. Plaintiff's complaint, alleging his current cause of action, was filed March 4, 1994, and is therefore untimely. [Doc. No. 1].

However, Case 559⁷ was filed July 13, 1990. [Case 559, Doc. No. 3]. Case 559 was, therefore, timely filed. However, as noted above, it was dismissed without prejudice on March 9, 1992.

In Brown v. Hartshorne School District #1, 926 F.2d 959 (10th Cir. 1991), the Tenth Circuit addressed the effect of a prior dismissal.

Because no federal statute of limitations is provided for section 1983 suits, we measure the timeliness of such actions by state law. The Supreme Court has made clear that a federal court applying a state's limitations periods should apply that state's tolling provisions as well. "Limitations periods in § 1983 suits are to be determined

⁷ For the purpose of exploring all possible statute of limitations arguments favorable to Plaintiff, the court assumes that Case 559 initially alleged sufficient facts to constitute a § 1983 claim.

by reference to the appropriate 'state statute of limitations and the coordinate tolling rules.'" The same reasoning applies to the savings provision, which is an integral part of a state's limitations and tolling rules.

Id. at 962. In a § 1983 action, a court applies not only the state statute of limitations, but also the applicable state's tolling provisions.

Oklahoma statutes provide:

If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within one (1) year after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed.

12 O.S. 1991, § 100. Where an action which was timely commenced is dismissed without prejudice prior to a trial on the merits, but after the expiration of the statute of limitations, a plaintiff has one year to commence a new action. 12 O.S. 1991, § 100; Brown, 926 F.2d at 962.

Plaintiff's initial action was dismissed on March 9, 1992. Plaintiff had one year from the date of that dismissal to commence a "second" action. Plaintiff did not file his second action until March 4, 1994, or almost two years after the dismissal of the earlier action. Plaintiff's action is untimely.

IV. REMAINING "STATE" CLAIMS

Plaintiff asserts in his Brief (but not in his initial complaint), that Defendants have continued to retaliate against him by failing to mow the vacant lot which adjoins Plaintiff's property. The court can identify no recognizable federal action to Plaintiff's

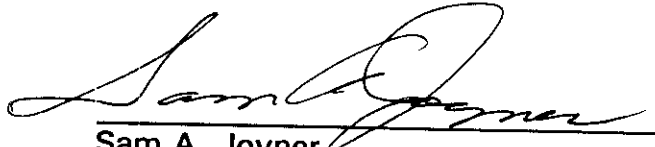
remaining claim(s). To the extent Plaintiff's complaint alleges any further cognizable actions under state law, pursuant to 28 U.S.C. § 1367(c), the court should decline to recognize jurisdiction over any remaining claims. Assuming any such claims were timely filed in this court, the applicable period of limitations is tolled during the pendency of this action and for a period of thirty days after it is dismissed. 28 U.S.C. § 1367(d).

V. RECOMMENDATION

The United States Magistrate Judge recommends that the District Court **GRANT** Defendants' Motions to Dismiss [Doc. Nos. 3-1 & 7-1], with prejudice. Defendants Lloyd Cunningham and Clay Edwards have not joined in the Motions to Dismiss. However, executed returns of service have not been filed with respect to these Defendants.

Any objection to this Report and Recommendation must be filed with the Clerk of the Courts within ten days of the receipt of this notice. Failure to file objections within the specified time will result in a waiver of the right to appeal the District Court's order. See Moore v. United States, 950 F.2d 656 (10th Cir. 1991).

Dated this 5 day of February 1996.


Sam A. Joyner
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

2-7-96

UNITED STATES OF AMERICA,
on behalf of Consolidated Farm Service Agency,
formerly Farmers Home Administration,

Plaintiff,

v.

MARK N. BROWN aka Mark Brown;
GINA R. BROWN;
FIRST STATE BANK OF FAIRFAX,

Defendants.

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 95-C-767-H

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6th day of February, 1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney; the Defendants, **Mark N. Brown aka Mark Brown; Gina R. Brown; and First State Bank of Fairfax**, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **Mark N. Brown aka Mark Brown**, was served with Summons and Complaint by a United States Deputy Marshal on December 1, 1995; that the Defendant, **Gina R. Brown**, was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on September 21, 1995; that the Defendant, **First State Bank of Fairfax**, executed a Waiver of Service of Summons on August 11, 1995 by its Vice-President Max Elsberry.

It appears that the Defendants, **Mark N. Brown aka Mark Brown; Gina R. Brown; and First State Bank of Fairfax**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that Consolidated Farm Service Agency, formerly Farmers Home Administration, is now known as Farm Service Agency.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of security agreements securing said promissory note on certain personal property located within the Northern Judicial District of Oklahoma.

The Court further finds that Mark N. Brown and Gina R. Brown executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Farm Service Agency, formerly Consolidated Farm Service Agency, the following promissory note.

Loan Number	Original Amount	Date	Interest Rate
44-01	\$95,800.00	02/13/90	5.5%

The Court further finds that as collateral security for the payment of the above-described note, Mark N. Brown aka Mark Brown and Gina R. Brown executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Farm Service Agency, formerly Consolidated Farm Service Agency, the following financing statements and security agreements thereby creating in favor of the Farmers Home Administration, now known as Farm Service Agency, formerly Consolidated Farm Service Agency, a security interest in certain crops, livestock, and farm machinery described therein.

Instrument	Dated	Filed	County	File Number
Financing Stmt.	02/13/90	02/13/90	Osage	000213
Continuation Stmt.		06/30/95	Osage	008150
Financing Stmt.	02/14/90	02/14/90	Pawnee	00115
Continuation Stmt.		09/26/94	Pawnee	00499
Security Agreement	02/13/90			
Security Agreement	01/18/91			
Security Agreement	01/21/92			
Security Agreement	10/30/92			

The Court further finds that the Defendants, **Mark N. Brown aka Mark Brown and Gina R. Brown**, made default under the terms of the aforesaid note and security agreements by reason of their failure to make the yearly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Mark N. Brown aka Mark Brown and Gina R. Brown**, are indebted to the Plaintiff in the principal sum of \$92,396.76, plus accrued interest in the amount of \$19,304.83 as of June 29, 1995, plus interest accruing thereafter at the rate of 5.5 percent per annum or \$13.9221 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, **First State Bank of Fairfax**, is in default, and therefore, has no right, title or interest in the subject personal property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Farm Service Agency, formerly Consolidated Farm Service Agency, formerly Farmers Home Administration, have and recover judgment against the Defendants, **Mark N. Brown aka Mark Brown and Gina R. Brown**, in the principal sum of \$92,396.76, plus accrued interest in the amount of

\$19,304.83 as of June 29, 1995, plus interest accruing thereafter at the rate of 5.5 percent per annum or \$13.9221 per day until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **First State Bank of Fairfax**, has no right, title, or interest in the subject personal property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, **Mark N. Brown aka Mark Brown and Gina R. Brown**, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the personal property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said personal property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

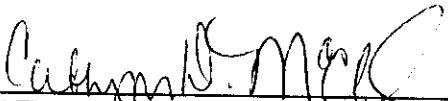
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the personal property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject personal property or any part thereof.

S/ SVEN ERIK HOLMES

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Case No. 95-C-767-H (Brown)

CDM:css

ENTERED ON DOCKET
DATE 2-7-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCELL WESTBROOK aka
MARCELL D. WESTBROOK aka
MARCELL DAVID WESTBROOK;
KAREN DENISE WESTBROOK; ITT
FINANCIAL SERVICES; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

FEB 6 1996

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

Civil Case No. 95-C 692H

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day of February,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, MARCELL WESTBROOK aka MARCELL D. WESTBROOK aka MARCELL DAVID WESTBROOK, KAREN DENISE WESTBROOK, and ITT FINANCIAL SERVICES, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, MARCELL WESTBROOK aka MARCELL D. WESTBROOK aka MARCELL DAVID WESTBROOK will hereinafter be referred to as ("MARCELL WESTBROOK").
The Defendant, MARCELL WESTBROOK, is a single, unmarried person.

The Court further finds that the Defendants, MARCELL WESTBROOK, KAREN DENISE WESTBROOK, and ITT FINANCIAL SERVICES, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 20, 1995, and continuing through November 24, 1995, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, MARCELL WESTBROOK, KAREN DENISE WESTBROOK, and ITT FINANCIAL SERVICES, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, MARCELL WESTBROOK, KAREN DENISE WESTBROOK, and ITT FINANCIAL SERVICES. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court

accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answer on August 14, 1995; and that the Defendants, MARCELL WESTBROOK, KAREN DENISE WESTBROOK, and ITT FINANCIAL SERVICES, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-six (26), Block Three (3), NORTHGATE THIRD ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on December 28, 1973, the Defendant, MARCELL WESTBROOK, and Vivian Ann Bailey, executed and delivered to Modern American Mortgage Corporation their mortgage note in the amount of \$14,250.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, MARCELL WESTBROOK and Vivian Ann Bailey, then to be married, executed and delivered to Modern American Mortgage Corporation a mortgage dated December 28, 1973, covering the above-described property. Said mortgage was

recorded on January 8, 1974, in Book 4102, Page 819, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 1, 1977, Modern Funding Incorporated, formerly Modern American Mortgage Corporation assigned the above-described mortgage note and mortgage to Modern American Mortgage Corporation, formerly MAMC Corporation. This Assignment of Mortgage was recorded on April 17, 1979, in Book 4322, Page 71, in the records of Tulsa County, Oklahoma. A corrected Assignment was recorded on November 23, 1992, in Book 5455, Page 970 in the records of Tulsa County, Oklahoma.

The Court further finds that on January 12, 1981, Modern American Mortgage Corporation assigned the above-described mortgage note and mortgage to Union National Bank of Little Rock. This Assignment of Mortgage was recorded on November 14, 1983, in Book 4743, Page 1098, in the records of Tulsa County, Oklahoma. A corrected Assignment was recorded on November 23, 1992, in Book 5455, Page 971, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 8, 1987, Union National Bank of Little Rock assigned the above-described mortgage note and mortgage to U.N. Service Corp. This Assignment of Mortgage was recorded on March 17, 1988, in Book 5087, Page 1786, in the records of Tulsa County, Oklahoma. A corrected Assignment was recorded on November 23, 1992 in Book 5455, Page 972 in the records of Tulsa County, Oklahoma.

The Court further finds that on November 17, 1992, U.N. Service Corp., assigned the above-described mortgage note and mortgage to Secretary of Housing and Urban Development. This Assignment of Mortgage was recorded on November 23, 1992, in Book 5455, Page 973, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 19, 1992, the Defendant, MARCELL WESTBROOK, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on January 14, 1993 and September 3, 1993.

The Court further finds that on December 31, 1987, the Defendants, MARCELL WESTBROOK and KAREN DENISE WESTBROOK, filed their voluntary petition for Chapter 7 relief in the United States Bankruptcy Court for the Northern District of Oklahoma, case number 87-B-3727, which was discharged on April 28, 1988 and was subsequently closed on July 7, 1988.

The Court further finds that the Defendant, MARCELL WESTBROOK, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, MARCELL WESTBROOK, is indebted to the Plaintiff in the principal sum of \$11,724.68, plus interest at the rate of 8.5 percent per annum from August 18, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$11.00 which became a lien on the property as of June 23, 1994. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, MARCELL WESTBROOK, KAREN DENISE WESTBROOK, and itt financial services, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendant, MARCELL WESTBROOK, in the principal sum of \$11,724.68, plus interest at the rate of 8.5 percent per annum from August 18, 1994 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$11.00, plus costs and interest, for personal property taxes for the year 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, MARCELL WESTBROOK, KAREN DENISE WESTBROOK, ITT

FINANCIAL SERVICES and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, MARCELL WESTBROOK, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$11.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all

instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ SVEN ERIK HOLM

UNITED STATES DISTRICT JUDGE

APPROVED:
STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 692H

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE 2-7-96

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHERYL HANKINS; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

) Civil Case No. 95cv 1015H

FILED

FEB 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day of February

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendant, CHERYL HANKINS, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, CHERYL HANKINS, signed a Waiver of Summons on October 26, 1995.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on October 23, 1995; and that the Defendant, CHERYL HANKINS, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, CHERYL HANKINS, is a single unmarried person.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-One (31), Block Seven (7), SUBURBAN ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on February 3, 1987, the Defendant, CHERYL HANKINS, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., LIMITED PARTNERSHIP, her mortgage note in the amount of \$28,026.00, payable in monthly installments, with interest thereon at the rate of Eight and One-Half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, CHERYL HANKINS, a single person, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., LIMITED PARTNERSHIP, a mortgage dated February 3, 1987, covering the above-described property. Said mortgage was recorded on February 5, 1987, in Book 5000, Page 549, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 18, 1987, COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., assigned the above-described mortgage note and mortgage to CITICORP HOMEOWNERS SERVICES, INC., and its future assigns. This

Assignment of Mortgage was recorded on July 13, 1987, in Book 5038, Page 1495, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 19, 1990, CITICORP MORTGAGE, INC., successor in interest to Citicorp Homeowners Services, Inc., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on January 22, 1990, in Book 5231, Page 2487, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 27, 1990, the Defendant, CHERYL HANKINS, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose.

The Court further finds that the Defendant, CHERYL HANKINS, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreement, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, CHERYL HANKINS, is indebted to the Plaintiff in the principal sum of \$41,006.88, plus interest at the rate of 8.5 percent per annum from March 28, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$2.00 which became a lien on the property as of July 7, 1988, a lien in the amount of \$6.00 which became a lien on the property as of.

June 25, 1993, and a lien in the amount of \$6.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CHERYL HANKINS, is in default and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, CHERYL HANKINS, in the principal sum of \$41,006.88, plus interest at the rate of 8.5 percent per annum from March 28, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in

the amount of \$14.00, plus costs and interest, for personal property taxes for the years 1987, 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, and CHERYL HANKINS, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, CHERYL HANKINS, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$14.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

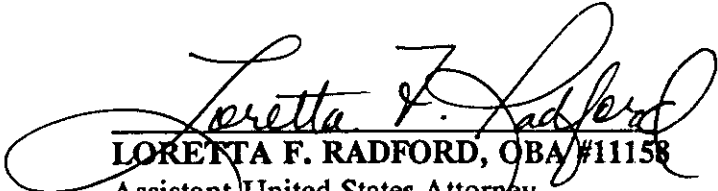
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ SVEN ERIC HOLMES


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 1015H

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
on behalf of the Small Business Administration and
the Department of Housing and Urban Development,

Plaintiff,

vs.

MARY K. WESTMORELAND
aka Mary Kathy Westmoreland
fka Mary Kathy Hendricks;
THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND
ASSIGNS OF BENNY WESTMORELAND
aka Benny Ross Westmoreland,
Deceased;
LLOYD ORAN PHILLIPS
aka Lloyd Owen Phillips aka Lloyd Oren Phillips
aka Lloyd O. Phillips;
BETTY LaVONNE TODD
fka Betty LaVonne Sharp fka Betty LaVonne Phillips
fka Betty L. Phillips;
LONGVIEW LAKE ASSOCIATION, INC.;
LEONA WILLIAMS;
STATE OF OKLAHOMA ex rel.
Oklahoma Tax Commission;
PUBLIC SERVICE COMPANY OF
OKLAHOMA;
CITY OF TULSA, Oklahoma;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma;
NORMAN DELL TODD,

Defendants.

FILED

FEB - 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE FEB 07 1996

CIVIL ACTION NO. 94-C-240-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 6 day of Feb.,

1996, upon the Motion of the Plaintiff, United States of America, acting on behalf of the

Small Business Administration, for leave to enter a Deficiency Judgment. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney, and the Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that copies of Plaintiff's Motion and Declaration were mailed by first-class mail to Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks, P.O. Box 210634, Bedford, Texas 76095, and by first-class mail to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on July 25, 1995, in favor of the Plaintiff, United States of America on behalf of the Small Business Administration, and against the Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, with interest to date of sale is \$40,441.18.

The Court further finds that the amount of the Judgment rendered on July 25, 1995, in favor of the Plaintiff, United States of America on behalf of the Department of Housing and Urban Development and against the Defendants, Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips and Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L. Phillips, with interest to date of sale is \$88,924.45.

The Court further finds that judgment of the Department of Housing and Urban Development is superior to the judgment of the Small Business Administration.

The Court further finds that the appraised value of the real property at the time of sale was \$65,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered July 25, 1995, for the sum of \$55,250.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on JAN. 16 1996.

The Court further finds that the Plaintiff, United States of America on behalf of the Small Business Administration, is accordingly entitled to a deficiency judgment against the Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, as follows:

Principal Balance Plus Pre-Judgment	\$39,890.00
Interest as of 07/25/95	
Interest From Date of Judgment to Sale	551.18
Total Judgment of Small Business Administration	\$40,441.18
Judgment of USA on behalf of Department	
Housing and Urban Development	\$88,924.45
Appraised Value (Credited to Judgment Department of	
Housing and Urban Development)	\$65,000.00
DEFICIENCY for Small Business Administration	\$40,441.18

plus interest on said deficiency judgment at the legal rate of 4.89 percent per annum from date of deficiency judgment until paid; said deficiency being the amount owed to the Small Business Administration since the amount of the appraised value is credited against the superior judgment of the Department of Housing and Urban Development.

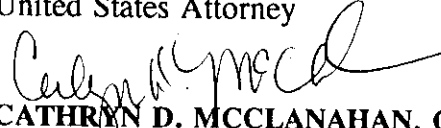
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Small Business Administration have and recover from Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, a deficiency judgment in the amount of **\$40,441.18**, plus interest at the legal rate of 4.89 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney


CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Deficiency Judgment
Case No. 94-C-240-B

CDM:css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 6 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

BRENDA HAMPTON-HIGGINS,

Plaintiff,

vs.

WARREN PETROLEUM COMPANY,
a subsidiary of CHEVRON USA, INC.,;
JOHN PAUL KLEIN; TULSA REGIONAL
MEDICAL CENTER; and
MICHAEL D. DUBRIWNY, M.D.,

Defendants.

No. 95-C-849-B ✓

ENTERED ON DOCKET

DATE FEB 07 1996

ORDER OF REMAND

This matter is before the Court on Plaintiff's Motion to Remand (Docket #6) filed October 5, 1995. Also pending before the Court is the Motion for Summary Judgment (Docket #19) by Defendant, Tulsa Regional Medical Center filed January 11, 1996, Plaintiff's Motion for Leave to File First Amended Complaint (Docket #22) filed January 12, 1996, and Plaintiff's Application for Relief Pursuant to Fed.R.Civ.P. 56(f). These latter three motions are moot before this Court at this time because the Court hereby sustains Plaintiff's Motion to Remand the case to the District Court in and for Tulsa County, Oklahoma for the reason hereafter stated.

Defendants' Notice of Removal filed herein on August 28, 1995, pursuant to 28 U.S.C. §1446 is based on diversity of citizenship under 28 U.S.C. §1332. The case of Laughlin v. Kmart Corporation, 50 F.3d 871 at 873 (10th Cir. 1995) states:

"The burden is on the party requesting removal to set forth, in the notice of removal itself,

the underlying facts supporting [the] assertion that the amount in controversy exceeds \$50,000." Gaus v. Miles, Inc., 980 F.2d 564, 567 (9th Cir. 1992). Moreover, there is a presumption against removal jurisdiction. *Id.*"

The Defendants' Notice of Removal does not establish the requisite jurisdictional amount in this case. Plaintiff's petition in the state court merely alleges the amount in controversy as follows:

"Plaintiff prays for judgment against the Defendants, and each of them, in an amount in excess of Ten Thousand Dollars (\$10,000.00), and award Plaintiff a sum in excess of Ten Thousand Dollars (\$10,000.00), as and for punitive damages, plus interest, costs, and expenses, including attorney's fees as allowed by law, and any and all such further relief to which this Plaintiff may be entitled."

The Notice of Removal does not refer to an amount in controversy, although the petition is attached as an exhibit to the notice. Thus, the Defendants failed to set forth the "underlying facts supporting the assertion that the amount in controversy exceeds \$50,000.00."

For this Court to have original jurisdiction in a diversity case, the amount in controversy must exceed \$50,000.00, 28 U.S.C. §1332(a).

As stated in Laughlin v. Kmart Corporation, *supra*:

"A court lacking jurisdiction ... must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." Tuck v. United Services Auto. Ass'n, 859 F.2d 842, 844 (10th Cir. 1988) (quoting Basso v. Utah Power & Light Co., 495 F.2d 906, 909 (10th Cir. 1974), *cert. denied*, 489 U.S. 1080, 109 S.Ct. 1534, 103 L.Ed.2d 839 (1989))."

Thus, Plaintiff's Motion to Remand this case to the District Court in and for Tulsa County, Oklahoma, is hereby SUSTAINED.

DATED this 6th day of February, 1996.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

incarcerating Plaintiff for non-payment of State imposed fines.

Defendants have moved to dismiss or, in the alternative, for summary judgment. After reviewing the record in this case, the Court concludes that Defendants' motions should be granted.

I. ANALYSIS

A court should dismiss a constitutional civil rights claim only if it appears beyond doubt that plaintiff could prove no set of facts in support of his claim which would entitle him to relief. Meade v. Grubbs, 841 F.2d 1512, 1526 (10th Cir. 1988) (citing Owens v. Rush, 654 F.2d 1370, 1378-79 (10th Cir. 1981)). For purposes of reviewing a complaint for failure to state a claim, all allegations in the complaint must be presumed true and construed in a light most favorable to plaintiff. Id.; Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991). Furthermore, pro se complaints are held to less stringent standards than pleadings drafted by lawyers and the court must construe them liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). Nevertheless, the court should not assume the role of advocate, and should dismiss claims which are supported only by vague and conclusory allegations. Hall, 935 F.2d at 1110.

Liberally construing Plaintiff's complaint in accord with his pro se status, the Court concludes that Plaintiff has stated a claim upon which relief can be granted for detainment for nonpayment of fines in violation of his due process and equal protection rights. In Tate v. Short, 401 U.S. 395, 399 (1971), the Supreme Court held that imprisoning an indigent solely because he is unable to pay his fines contravenes the equal protection clause by discriminating based upon economic status. Compare Doe v. Angelina County, 733 F.Supp. 245 (E.D. Texas 1990), with Smith v.

State, 857 S.W.2d 81 (Tex. App. 1993).

The Court notes, however, that Plaintiff cannot state a claim for conspiracy under either section 1983 or 1985(3) as he has not alleged that Defendants "reached an understanding' to violate his rights." Strength v. Hubert, 854 F.2d 421, 425 (11th Cir. 1988) (quoted case omitted). Plaintiff's complaint and response are completely devoid of any claim as to when and how Defendants' agreed to violate his civil rights. See Durre v. Dempsey, 869 F.2d 543, 545 (10th Cir. 1989) (an implied agreement cannot be garnered from the nature of the conspiracy itself). Even assuming Plaintiff could establish an agreement among the Defendants, he has not alleged any racial or class-based discriminatory animus to support a conspiracy under section 1985(3). See Griffin v. Breckenridge, 403 U.S. 88, 102 (1971) (in addition to proof of a conspiracy, a plaintiff seeking relief under section 1985(3) must show "some racial, or perhaps other class-based invidiously discriminatory animus behind the conspirator's action").³

Lastly, neither Defendant Moss nor Defendant Glanz were personally involved in the denial of Plaintiff's requests for a state writ of habeas corpus as alleged in Count II of the complaint. See Ruark v. Solano, 928 F.2d 947 (10th Cir. 1991) (personal involvement in the alleged constitutional deprivation is a prerequisite to section 1983 liability). Therefore, Count II is hereby dismissed for failure to state a claim.

³ As a recovery under section 1986 is dependent upon the existence of a claim under section 1985, Plaintiff cannot establish a cause of action under section 1986. See Taylor v. Nichols, 558 F.2d 561, 568 (10th Cir. 1977).

III. CONCLUSION

Accordingly, the motion to dismiss of Defendant Moss (docket #15) is GRANTED and he is DISMISSED with prejudice at this time. The motion to dismiss of Defendant Glanz (docket #11) is DENIED as to Plaintiff's claim that he was detained in violation of his constitutional rights and GRANTED in all other respects. The following scheduling order will govern the course of this case and can be altered only by court order.

1. 5-1-96 Discovery cutoff (interrogatories and Rule 34 requests 30 days in advance)
2. 5-19-96 Dispositive motions cutoff (See Local Rule 56.1)
 - a. 6-8-96 Responses
 - b. 6-23-96 Replies

SO ORDERED THIS 6 day of February, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHERYL A. RYALS; CITY OF TULSA,
Oklahoma; COUNTY TREASURER, Tulsa
County, Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

FEB 06 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

Civil Case No. 95-CV 1001K

ENTERED ON DOCKET
DATE FEB 07 1996

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6 day of Feb, 1996.

The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, CITY OF TULSA, Oklahoma, appears by Assistant City Attorney, Alan L. Jackere; and the Defendant, CHERYL A. RYALS, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, CHERYL A. RYALS, is a single, unmarried person.

The Court being fully advised and having examined the court file finds that the Defendant, CHERYL A. RYALS, acknowledged receipt of Summons and Complaint via certified mail on November 17, 1995.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed

NOTE: THIS ORDER IS TO BE MAILED
BY MAIL TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

their Answer on October 12, 1995; that the Defendant, CITY OF TULSA, Oklahoma, filed its Answer on October 13, 1995; and that the Defendant, CHERYL A. RYALS, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

THE NORTH FIFTY (50) FEET OF THE NORTH ONE HUNDRED (100) FEET OF LOT FOUR (4), BLOCK FIVE (5), FAIRLAND ADDITION TO TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on December 20, 1989, the Defendant, CHERYL A. RYALS, and Manning G. Ryals, executed and delivered to FIRST MORTGAGE TRUST CORPORATION, d/b/a FIRST MORTGAGE CORP., their mortgage note in the amount of \$25,600.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, CHERYL A. RYALS, and Manning G. Ryals, then Husband and Wife, executed and delivered to FIRST MORTGAGE TRUST CORPORATION d/b/a FIRST MORTGAGE CORP. a mortgage dated December 20, 1989, covering the above-described property. Said mortgage was recorded on December 26, 1989, in Book 5227, Page 801, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 29, 1990, FIRST MORTGAGE CORP. assigned the above-described mortgage note and mortgage to BARCLAYS AMERICAN MORTGAGE CORPORATION. This Assignment of Mortgage was recorded on February 13, 1990, in Book 5236, Page 455, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 7, 1991, BARCLAYS AMERICAN MORTGAGE CORPORATION assigned the above-described mortgage note and mortgage to the SECRETARY OF HOUSING AND URBAN DEVELOPMENT, HIS SUCCESSORS AND ASSIGNS. This Assignment of Mortgage was recorded on October 15, 1991, in Book 5355, Page 2036, in the records of Tulsa County, Oklahoma. A corrected assignment was recorded on December 9, 1991 in Book 5366, Page 1683 in the records of Tulsa County, Oklahoma.

The Court further finds that on December 8, 1993, the Defendant, CHERYL A. RYALS, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on September 13, 1991, October 9, 1992 and February 24, 1992.

The Court further finds that the Defendant, CHERYL A. RYALS, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, CHERYL A. RYALS, is indebted to the Plaintiff in the principal sum of \$34,311.69, plus interest at the rate of 10 percent per annum from September 18, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action for

cleaning and mowing in the amount of \$1,038.00, plus penalties and interest, for the year of 1994. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF TULSA, Oklahoma, has a lien on the property which is the subject matter of this action for nuisance abatement in the amount of \$598.00, costs of \$5.00, and interest thereon at the rate of 1.5% per month from February 12, 1995 which became a lien as of January 4, 1995; and a lien for nuisance abatement in the amount of \$430.00, costs of \$5.00, which became a lien as of October 9, 1995. Said liens are the same liens that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has claimed as an interest, as stated above.

The Court further finds that the Defendant, CHERYL A. RYALS, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendant, CHERYL A. RYALS, in the principal sum of \$34,311.69, plus interest at the rate of 10 percent per annum from September 18, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional

sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$1038.00, plus penalties and interest, for cleaning and mowing for the year 1994, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, CITY OF TULSA, Oklahoma, has an interest in the amount of \$1038.00, for cleaning and mowing in 1994; the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma and CITY OF TULSA, Oklahoma, have agreed that since the liens of each Defendant are identical, that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has the superior lien, and therefore, the Defendant, CITY OF TULSA, Oklahoma, is not entitled to payment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, CHERYL A. RYALS and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, CHERYL A. RYALS, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$1038.00, plus penalties and interest, for cleaning and mowing which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

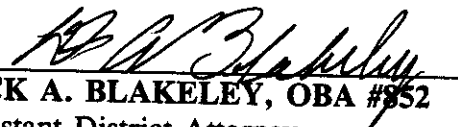
s/ TERRY C. KERN

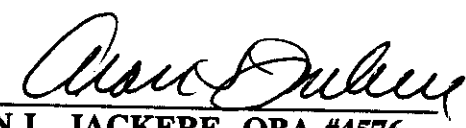
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


ALAN L. JACKERE, OBA #4576
Assistant City Attorney
200 Civic Center, Room 316
Tulsa, Oklahoma 74103
(918) 596-7717
Attorney for Defendant,
City of Tulsa, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-CV 1001K
LFR/lg

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

RHONDA L. HUNT,
SS# 545-68-7778

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,¹⁾

Defendant.

FILED 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

No. 95-C-144-J ✓

ENTERED ON DOCKET

DATE 2-6-96

ORDER²⁾

Plaintiff, Rhonda L. Hunt, pursuant to 42 U.S.C. § 405(g), requests judicial review of the decision of the Secretary denying Social Security benefits.³⁾ Plaintiff asserts error because (1) the Secretary did not properly evaluate Plaintiff's alcoholism, (2) the hypothetical presented to the vocational expert did not include all of Plaintiff's

¹⁾ Effective March 31, 1995, the functions of the Secretary of Health and Human Services ("Secretary") in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. Civ. P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

²⁾ This Order is entered in accordance with 28 U.S.C. § 636(c) and pursuant to the parties' Consent to Proceed Before United States Magistrate Judge.

³⁾ Plaintiff filed an application for supplemental security insurance benefits on October 21, 1992. *R. at 42*. The application was denied initially and upon reconsideration. A hearing before Administrative Law Judge Glen E. Michael (hereafter, "ALJ") was held October 14, 1993. *R. at 131*. By order dated October 27, 1993, the ALJ determined that Plaintiff was not disabled. *R. at 23-32*. Plaintiff appealed the ALJ's decision to the Appeals Council. On May 27, 1994 the Appeals Council initially denied Plaintiff's request for review. *R. at 14*. The Appeals Council denied Plaintiff's second request for review on July 28, 1994. *R. at 11*.

impairments, and (3) the ALJ improperly relied on the Grids.⁴¹ For the reasons discussed below, the Court affirms the Secretary's decision.

I. PLAINTIFF'S BACKGROUND

Plaintiff was born August 6, 1945, and finished the tenth grade. *R. at 42, 134.* Plaintiff claims disability based on high blood pressure, pain in her back, and problems with her hip, leg, and knee. *R. at 77, 138.* Plaintiff additionally testified that she drinks approximately one-fifth of alcohol each week, and sometimes drinks due to her back pain. *R. at 150-51.*

Plaintiff previously worked at an antique shop, in a restaurant, a fast food place, and for a dry cleaners. *R. at 71.* Plaintiff's last work experience was in 1987 or 1988. *R. at 71, 136.*

II. STANDARD OF REVIEW

Disability under the Social Security Act is defined as the

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment

42 U.S.C. § 423(d)(1)(A). A claimant is disabled under the Social Security Act only if his

physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work in the national economy. . . .

⁴¹ The Medical-Vocational Guidelines, commonly referred to as the "Grids," are located at 20 C.F.R. Pt. 404, Supbt. P, App. 2.

42 U.S.C. § 423(d)(2)(A). The Secretary has established a five-step process for the evaluation of social security claims.⁵¹ See 20 C.F.R. § 404.1520.

The Secretary's disability determinations are reviewed to determine (1) if the correct legal principles have been followed, and (2) if the decision is supported by substantial evidence. See 42 U.S.C. § 405(g); Bernal v. Bowen, 851 F.2d 297, 299 (10th Cir. 1988); Williams, 844 F.2d at 750.

The Court, in determining whether the decision of the Secretary is supported by substantial evidence, does not reweigh the evidence or examine the issues *de novo*. Sisco v. United States Dept. of Health and Human Services, 10 F.3d 739, 741 (10th Cir. 1993). The Court will, however, meticulously examine the entire record. Williams, 844 F.2d at 750.

"The finding of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). Substantial evidence is that amount and type of evidence that a reasonable mind will accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Williams,

⁵¹ Step one requires the claimant to establish that he is not engaged in substantial gainful activity (as defined at 20 C.F.R. §§ 404.1510 and 404.1572). Step two requires that the claimant demonstrate that he has a medically severe impairment or combination of impairments that significantly limit his ability to do basic work activities. See 20 C.F.R. § 1521. If claimant is engaged in substantial gainful activity (step one) or if claimant's impairment is not medically severe (step two), disability benefits are denied. At step three, claimant's impairment is compared with those impairments listed at 20 C.F.R. Pt. 404, Subpt. P, App. 1 (the "Listings"). If a claimant's impairment is equal or medically equivalent to an impairment in the Listings, claimant is presumed disabled. If a Listing is not met, the evaluation proceeds to step four, where the claimant must establish that his impairment or the combination of impairments prevents him from performing his past relevant work. A claimant is not disabled if the claimant can perform his past work. If a claimant is unable to perform his previous work, the Secretary has the burden of proof (step five) to establish that the claimant, in light of his age, education, and work history, has the residual functional capacity ("RFC") to perform an alternative work activity in the national economy. If a claimant has the RFC to perform an alternate work activity, disability benefits are denied. See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987); Williams v. Bowen, 844 F.2d 748, 750-51 (10th Cir. 1988).

844 F.2d at 750. In terms of traditional burdens of proof, substantial evidence is more than a scintilla, but less than a preponderance. Perales, 402 U.S. at 401. Evidence is not substantial if it is overwhelmed by other evidence in the record. Williams, 844 F.2d at 750.

III. THE ALJ'S DECISION

The ALJ observed that Plaintiff's complaints of pain, Plaintiff's symptoms, and the medical record, were insufficient to establish that Plaintiff was disabled. *R. at 26*. The ALJ noted that although Plaintiff testified that she had a history of alcohol abuse, the medical records indicated no evidence of organ damage, seizure disorder, or mental illness. *R. at 25*. In addition nothing indicated that her alleged alcohol abuse interfered with her ability to work. The ALJ concluded that the medical record indicated that Plaintiff could work. *R. at 25, 26*. Based on the testimony of a vocational expert, the ALJ determined that although Plaintiff could not perform her past work, a substantial number of jobs existed in the national economy which Plaintiff could perform. *R. at 27*.

IV. REVIEW

Alcoholism/Substance Addiction

Plaintiff asserts that the Secretary failed to properly evaluate her substance addiction and mental problems. Plaintiff claims the record indicates that she has a problem with alcohol. Plaintiff argues that the ALJ has a duty to develop the record, but that the ALJ failed to adequately explore Plaintiff's substance addiction and mental problems.

Plaintiff applied for social security in October 1992, claiming she became impaired in 1990 due to high blood pressure and a stroke on her right side. *R. at 42.* Plaintiff was admitted to Tulsa Regional Medical Center on July 21, 1992 for acute pancreatitis and substance abuse. *R. at 95.* Plaintiff's record indicates she complained of pain (for the three weeks preceding her admission), nausea, and vomiting. *R. at 95, 97.* Plaintiff informed her doctor that she drank "about one quart of alcohol a day only on the weekends, and occasionally during the week." *R. at 95.* Plaintiff testified that she drank "maybe a fifth in about a week," and drank when she was in pain. *R. at 150.*

Plaintiff was evaluated by Janice C. Boon, Ph.D., on January 25, 1993. *R. at 54.* Dr. Boon noted Plaintiff's substance addiction, but concluded that Plaintiff had no severe impairments. Dr. Boon indicated on Plaintiff's PRT Form (Psychiatric Review Technique Form) that Plaintiff's "functional limitations" are "none" and "never."⁶¹ *R. at 54-61.* This evaluation was "affirmed as written" on April 22, 1993 by R.E. Smallwood, Ph.D. *R. at 55.*

Plaintiff was examined by Donald R. Inbody, M.D. on January 19, 1993. *R. at 114.* Dr. Inbody noted that Plaintiff denied any psychiatric problems. *R. at 114.* Dr. Inbody observed that Plaintiff's "speech was logical, coherent and sequential, with no

⁶¹ If a claimant has a mental impairment, the degree of functional loss resulting from the impairment must be rated in four areas. 20 C.F.R. § 1520a(b)(3). The four areas are: (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace; and (4) deterioration or decompensation in work or work-like settings. 20 C.F.R. § 1520a(b)(3). If each of the four areas is rated as having an impact of "none," "never," "slight," or "seldom," the conclusion is that "the impairment is not severe, unless the evidence otherwise indicates there is significant limitation of [the claimant's] mental ability to do basic work activities." See 20 C.F.R. § 1520a(c)(1).

affective disturbances or associational defects in thinking." *R. at 115*. Plaintiff was oriented in all spheres. *R. at 115*. Dr. Inbody concluded that Plaintiff was capable of functioning and handling her own money. *R. at 115-16*.

Plaintiff was examined by Steven Y.M. Lee, M.D., on December 22, 1992. *R. at 103*. Dr. Lee noted that Plaintiff's gait was normal and her speed of walking was normal and stable. *R. at 106*. In addition, Plaintiff's range of motion for all joints in the upper and lower extremities was normal. *R. at 105*. The doctor noted Plaintiff exhibited no signs of deformity, redness, heat, tenderness, or swelling of any of the joints. *R. at 105*. Plaintiff's liver and spleen were not enlarged. *R. at 105*. The doctor found "no evidence of swelling or deformity of the right hip." *R. at 106*. In addition, Plaintiff's muscular strength was reported as "normal and equal bilaterally." *R. at 106*. Plaintiff had normal manual dexterity and normal grip strength. *R. at 106*. The doctor concluded that Plaintiff's low back pain occurs at a "frequency of once every two to three months [and is] unrelated [to] exertion or trauma." *R. at 106*. "Examination seemed to find no evidence of lumbar disk disease and no evidence of sciatic nerve irritation." *R. at 106*. In addition, the doctor could find no explanation for Plaintiff's right knee weakness. Plaintiff's knee "appeared to be stable, with no evidence of tenderness, swelling, or deformity." Plaintiff's range of motion was normal. *R. at 106*. Plaintiff takes Motrin, Extra-Strength Tylenol, and Advil for her pain. *R. at 94*.

In Coleman v. Chater, 58 F.3d 577 (10th Cir. 1995), the plaintiff asserted that the Secretary did not consider his mental and alcohol related impairments. The record

indicated that the plaintiff did consume alcohol. However the plaintiff was never treated for a psychological or alcohol problem, and the examining physicians reported no signs of alcohol abuse. The Tenth Circuit Court of Appeals noted that "[e]ven if we were to accept plaintiff's contention that he is an alcoholic, '[t]he mere presence of alcoholism is not necessarily disabling.' Rather, alcoholism, 'alone or in combination with other impairments, must render [claimant] unable to engage in any substantial gainful employment.'" Id. at 579 (citations omitted).

Plaintiff's mental examinations indicate Plaintiff does not have a severe mental or substance abuse problem. Plaintiff's physical examinations did not reveal any signs of alcohol abuse. The ALJ's conclusion that Plaintiff's "substance abuse" was not severe and did not interfere with Plaintiff's ability to work is supported by substantial evidence.

Hypothetical Question

Plaintiff contends that the ALJ's hypothetical failed to include all of Plaintiff's "documented non-exertional impairments, particularly alcoholism." Plaintiff's Brief at 5. However, an ALJ is not required to accept all of a plaintiff's testimony with respect to restrictions as true, but may pose such restrictions to the vocational expert which are accepted as true by the ALJ. Talley v. Sullivan, 908 F.2d 585, 588 (10th Cir. 1990). In addition, credibility determinations by the trier of fact are given great deference on review. Hamilton v. Secretary of Health & Human Services, 961 F.2d 1495 (10th Cir. 1992).

The following limitations were included in the hypothetical presented to the vocational expert.

[T]his individual has high blood pressure and chronic pain -
- high blood pressure and back pressure and a hip problem.
And then -- causing the pain that is of a severity that is to
be noticeable at all times. And that she's taking medication
for relief of that pain. But the medication would not keep
her from functioning at the sedentary or light level. Now
she's got a right knee that gives out from time to time,
maybe two or three times a week and would cause her to
have to sit down and become immobile for a little while.
And she'll find that she's got to change position from time
to time to relieve her pain.

R. at 155. The Court finds that the hypothetical adequately includes Plaintiff's documented impairments. Plaintiff asserts only that it does not include her "nonexertional impairments," but Plaintiff neglects to mention what impairment, besides "alcoholism," that the ALJ failed to include. As noted above, the ALJ correctly determined that Plaintiff's alleged alcohol abuse was not a severe impairment and did not impact Plaintiff's ability to work. Consequently, the ALJ did not err in failing to include "alcohol abuse" in the hypothetical presented to the vocational expert.

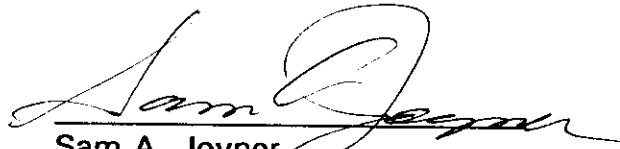
Grids/ Reliance on Vocational Expert's Testimony

Plaintiff asserts that because Plaintiff had both exertional and non-exertional impairments the ALJ was precluded from applying or relying upon the Grids. However, "the mere presence of a nonexertional impairment does not automatically preclude reliance on the grids. The presence of nonexertional impairments precludes reliance on the grids only to the extent that such impairments limit the range of jobs

available to the claimant." Gossett v. Bowen, 862 F.2d 802, 807-08 (10th Cir. 1988). Regardless, the ALJ did not conclusively rely upon the Grids, but consulted a vocational expert and presented Plaintiff's non-exertional impairments to the expert. See e.g. Hargis v. Sullivan, 945 F.2d 1482, 1990 (10th Cir. 1991).

Accordingly, the Secretary's decision is **AFFIRMED**.

Dated this 5 day of February 1996.


Sam A. Joyner
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

RHONDA L. HUNT,
SS# 545-68-7778

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,¹¹

Defendant.

FEB 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

No. 95-C-144-J ✓


ENTERED ON DOCKET

DATE 2-6-96

JUDGMENT

This action has come before the Court for consideration and an Order affirming the decision of the Secretary has been entered. Judgment for the Defendant and against the Plaintiff is hereby entered pursuant to the Court's Order.

It is so ordered this 5 day of February 1996.


Sam A. Joyner
United States Magistrate Judge

¹¹ Effective March 31, 1995, the functions of the Secretary of Health and Human Services ("Secretary") in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. Civ. P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

87
1-21-96

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

SAM MAJORS-HARDEE,

Plaintiff,

-VS-

STATE FARM FIRE AND CASUALTY
COMPANY, and STATE FARM
GENERAL INSURANCE COMPANY,

Defendants.

Case No. 93-C-1050 H ✓

ENTERED ON DOCKET

DATE 2-6-96

ORDER

This matter comes on for Status Hearing this 31st day of January, 1996. The Defendants, State Farm Fire and Casualty Company and State Farm General Insurance Company, appear by their counsel, Paul B. Harmon of Selman and Stauffer, Inc. The Plaintiff does not appear personally or by counsel. Upon review of the file and hearing arguments of counsel, and being fully advised, the Court finds that the Plaintiff has failed to prosecute this action, failed to appear when ordered by the Court, and failed to advise the Court of his whereabouts. Therefore, the Court finds that this action should be dismissed without prejudice for failure to prosecute.

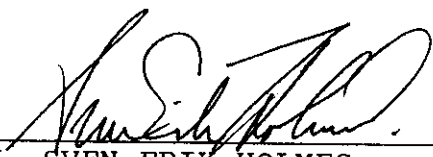
In addition, the Court notes that the Defendants have incurred certain costs in connection with this litigation. The Court finds that it is appropriate for plaintiff to be required to pay certain costs upon refiling of this action. The Court finds that upon refiling of this action, if it is in fact refiled, this matter should be set for prompt hearing to determine the nature and amount

60

of costs to which Defendants are entitled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action be dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event this action is refiled, it shall be set for hearing to determine the nature and amount of costs to which Defendants shall be entitled.



HON. SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

JIMMY A. CRITTENDEN,
SS# 443-66-6838

Plaintiff,

v.

No. 94-C-991-J ✓

SHIRLEY S. CHATER, Commissioner of
Social Security,¹¹

Defendant.

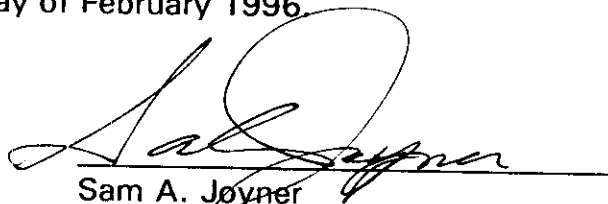
ENTERED ON DOCKET

DATE 2-6-96

JUDGMENT

This action has come before the Court for consideration and an Order remanding the case to the Secretary has been entered. Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

It is so ordered this 5 day of February 1996.


Sam A. Joyner
United States Magistrate Judge

¹¹ Effective March 31, 1995, the functions of the Secretary of Health and Human Services ("Secretary") in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. Civ. P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

JIMMY A. CRITTENDEN,
SS# 443-66-6838

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,¹¹

Defendant.

No. 94-C-991-J ✓

ENTERED ON DOCKET

DATE 2-6-96

ORDER²¹

Plaintiff, Jimmy A. Crittenden, pursuant to 42 U.S.C. § 405(g), requests judicial review of the decision of the Secretary denying Social Security benefits.³¹ Plaintiff asserts that the Secretary erred because (1) the ALJ's conclusion that Plaintiff can perform work at the medium level is not supported by substantial evidence, and (2) the ALJ's decision does not contain substantial evidence that Plaintiff can return to

¹¹ Effective March 31, 1995, the functions of the Secretary of Health and Human Services ("Secretary") in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. Civ. P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

²¹ This Order is entered in accordance with 28 U.S.C. § 636(c) and pursuant to the parties' Consent to Proceed Before United States Magistrate Judge.

³¹ Plaintiff filed an application for disability and supplemental security insurance benefits. *R. at 106*. The application was denied initially and upon reconsideration. A hearing before Administrative Law Judge Stephen C. Calvarese (hereafter, "ALJ") was held August 11, 1993. *R. at 47*. By order dated February 10, 1994, the ALJ determined that Plaintiff was not disabled. *R. at 16-33*. Plaintiff appealed the ALJ's decision to the Appeals Council. On September 14, 1994, the Appeals Council denied Plaintiff's request for review, and denied Plaintiff's request to reopen its prior decision denying review. *R. at 4*.

13

his past relevant work. For the reasons discussed below, the Court reverses the Secretary's decision and remands this case to the Secretary for proceedings consistent with this opinion.

I. PLAINTIFF'S BACKGROUND

Plaintiff was born March 20, 1967, and completed high school. *R. at 59, 106.* Plaintiff was injured on August 6, 1990, while working under a car. *R. at 107.* Plaintiff was additionally injured on June 21, 1993, when he was bitten by a snake. *R. at 310-312.*

II. STANDARD OF REVIEW

Disability under the Social Security Act is defined as the

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment

42 U.S.C. § 423(d)(1)(A). A claimant is disabled under the Social Security Act only if his

physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work in the national economy. . . .

42 U.S.C. § 423(d)(2)(A). The Secretary has established a five-step process for the evaluation of social security claims.⁴¹ See 20 C.F.R. § 404.1520.

⁴¹ Step one requires the claimant to establish that he is not engaged in substantial gainful activity (as defined at 20 C.F.R. §§ 404.1510 and 404.1572). Step two requires that the claimant demonstrate that he has a medically severe impairment or combination of impairments that significantly limit his ability to do basic work activities. See 20 C.F.R. § 1521. If claimant is engaged in substantial gainful activity (step one) or if claimant's impairment is not medically severe (step two), disability benefits are denied. At step three, claimant's impairment is compared with those impairments listed at 20 C.F.R. Pt. 404, Subpt.

The Secretary's disability determinations are reviewed to determine (1) if the correct legal principles have been followed, and (2) if the decision is supported by substantial evidence. See 42 U.S.C. § 405(g); Bernal v. Bowen, 851 F.2d 297, 299 (10th Cir. 1988); Williams, 844 F.2d at 750.

The Court, in determining whether the decision of the Secretary is supported by substantial evidence, does not reweigh the evidence or examine the issues *de novo*. Sisco v. United States Dept. of Health and Human Services, 10 F.3d 739, 741 (10th Cir. 1993). The Court will, however, meticulously examine the entire record. Williams, 844 F.2d at 750.

"The finding of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). Substantial evidence is that amount and type of evidence that a reasonable mind will accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Williams, 844 F.2d at 750. In terms of traditional burdens of proof, substantial evidence is more than a scintilla, but less than a preponderance. Perales, 402 U.S. at 401. Evidence is not substantial if it is overwhelmed by other evidence in the record. Williams, 844 F.2d at 750.

P, App. 1 (the "Listings"). If a claimant's impairment is equal or medically equivalent to an impairment in the Listings, claimant is presumed disabled. If a Listing is not met, the evaluation proceeds to step four, where the claimant must establish that his impairment or the combination of impairments prevents him from performing his past relevant work. A claimant is not disabled if the claimant can perform his past work. If a claimant is unable to perform his previous work, the Secretary has the burden of proof (step five) to establish that the claimant, in light of his age, education, and work history, has the residual functional capacity ("RFC") to perform an alternative work activity in the national economy. If a claimant has the RFC to perform an alternate work activity, disability benefits are denied. See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987); Williams v. Bowen, 844 F.2d 748, 750-51 (10th Cir. 1988).

III. THE ALJ'S DECISION

In this case, the ALJ determined that Plaintiff had the residual functional capacity to occasionally lift 50 pounds, frequently lift 25 pounds, and walk or stand for more than six hours in an eight hour day. *R. at 28.* The ALJ determined Plaintiff could perform medium work and could return to his past relevant work. *R. at 28.* The ALJ concluded that although Plaintiff suffered from a severe back impairment, and some mental problems (including depression and anxiety), Plaintiff's testimony regarding his pain was not credible. *R. at 28.* The ALJ additionally found that Plaintiff's asserted mental impairment was not of Listing level severity. *R. at 29-33.*

IV. REVIEW

Substantial Evidence

Plaintiff initially asserts that the record does not contain substantial evidence that Plaintiff could perform medium work. Medium work requires "lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work." 20 C.F.R. § 404.1567(c).

Plaintiff, while working under a car, was injured when a second car hit the car he was working on, causing the car to fall and pin him beneath it. Plaintiff went to the emergency room and was diagnosed with an impingement of his right hip, a contusion to his upper thigh, and a lumbosacral strain. *R. at 187.* The records indicate that Plaintiff was not admitted. *R. at 187.*

Plaintiff was admitted to the hospital on June 21, 1993. *R. at 310.* Plaintiff was bitten on his right finger by a snake while trying to pick up the snake. *R. at 312.* Plaintiff was discharged on June 22, 1993 after receiving antivenom. Plaintiff was again admitted on July 1, 1993, and discharged on July 3, 1993, for a reaction to the antivenom. *R. at 266.*

Plaintiff testified that due to his injury, his right shoulder remains painful and he has trouble reaching for objects. *R. at 67.* Plaintiff also has pain in his lower back and hip, which travels down his right and left leg. *R. at 80.* Plaintiff testified that he has difficulty lifting or bending. *R. at 68.* Plaintiff stated he has difficulty sleeping at night, has dizzy spells from his medication, and has problems concentrating. *R. at 74-76.*

Plaintiff testified that he can lift approximately thirty pounds approximately three times each day. *R. at 67.* Plaintiff believes he could walk approximately thirty yards comfortably. *R. at 68.* Plaintiff testified that he is able to do the dishes, vacuum approximately one time each week, and put clothes into and take them out of the washer and dryer. *R. at 70.* On his activities sheet on June 3, 1991, Plaintiff noted he does dishes two times each day, shops once per week, and works on his car. *R. at 137.* Plaintiff also noted that he sometimes sings with his brother, and that he and his brother are attempting to form a band. *R. at 137.*

After his initial injury, Plaintiff attempted to return to work. Plaintiff worked at Hardwall Fabricators from July 22, 1991 until August 17, 1991. Plaintiff indicated that he quit because his back hurt too much. *R. at 120.* Plaintiff worked for Allen

Canning Co. from January 5, 1991 until March 9, 1991. Plaintiff indicated he quit working because he was "moved to a harder position and couldn't take it." *R. at 120*. Plaintiff also noted that he worked ten hours per day at this job, five days per week. *R. at 120*. Plaintiff also worked about two to three days per week for approximately three weeks putting up a fence. *R. at 124*. Plaintiff's work attempts were classified as "unsuccessful" by the Social Security Administration. *R. at 123, 127*.

The ALJ determined that Plaintiff's testimony was not credible, and that the medical evidence from the examining physicians and Plaintiff's own activities supported the conclusion that Plaintiff could perform medium work. *R. at 22-23*.

The ALJ does not provide reasons for his determination of Plaintiff's credibility. *R. at 26, 27*. However, Plaintiff's testimony is, in some instances, contradictory. For example, Plaintiff testified that he worked helping an older gentleman put a fence in front of his house, and that the entire job lasted about two days, although "it might have lasted longer." *R. at 64*. However, in Plaintiff's "work activity report," Plaintiff indicated that he "put up a little fence," and the work "lasted about three weeks" for two to three days per week. *R. at 124, 157*. Plaintiff testified that he had not driven since approximately the same time as his accident. *R. at 71*. During his examination by Glen W. Cosby, M.D., on October 23, 1991, Plaintiff told the doctor that driving more than ten miles was painful (*r. at 192*), and Plaintiff indicated, on a Disability Interview questionnaire that he sometimes drove. *R. at 148*. Although Plaintiff testified (and the record indicates) that Plaintiff worked at three jobs after his injury,

during his interview with William J. Klontz, M.D., on October 29, 1991, Plaintiff indicated that he had not worked since his injury. *R. at 200.* Plaintiff testified that he quit Hardwall Fabricators because of a conflict with his supervisor and because he could not take it anymore. *R. at 63.* A form completed by Hardwall Fabricators, on January 12, 1993, indicates that Plaintiff stopped working because his back hurt while he was working. *R. at 224.*

Plaintiff was seen at the emergency room on August 6, 1990 after being pinned under a car. *R. at 187.* Plaintiff complained of pain to his right hip, pelvis, right femur, and lumbosacral spine. *R. at 187.* Plaintiff's X-rays revealed no fractures. *R. at 187.* Plaintiff was diagnosed with an impingement of his right hip, a contusion of his right upper thigh, and lumbosacral stain. *R. at 187.* The X-ray of Plaintiff's spine showed "some loss of normal curvature suggesting muscle spasm." *R. at 191.*

Plaintiff was examined by Glen W. Cosby, M.D., on October 23, 1991. *R. at 192.* Plaintiff told Dr. Cosby that when he was pinned by the car he had no fractures but was severely smashed. *R. at 192.* Plaintiff indicated he had had no examinations or treatment since being treated at the emergency room (on August 6, 1990). *R. at 192.* Dr. Cosby determined that Plaintiff had no limitation on his range-of-motion, but that he did have some pain in his right shoulder with full extension. *R. at 193.* Dr. Cosby indicated Plaintiff was able to bend forward and touch his toes, walked well, was able to dress and undress himself without assistance and could perform a heel/toe walk, squat, and rise without assistance or pain. *R. at 193-94.* Dr. Cosby did note that Plaintiff's X-rays were negative in August of 1990 "but his back problem

appears to be progressive and it is felt that he should have a neurosurgical consultation and CT scans to rule out extruded lumbar disk." *R. at 194.* Dr. Cosby additionally gave no indication of the amount of weight Plaintiff could lift or how far he could walk. Dr. Cosby concluded that Plaintiff had residual pain in his right shoulder and hypertension. *R. at 194.*

A CT Lumbar Spine performed on December 16, 1992 was interpreted as indicating a "lumbar strain, [and] contusion right upper thigh." *R. at 214.* The report indicates minimal annular disc protrusion at the L5-S1 level. *R. at 214.*

Plaintiff's records indicated he saw a doctor, beginning in August of 1992, approximately one time per month, until July 8, 1993, for his back pain. *R. at 354-368.* The record of each visit indicates that Plaintiff complained of back pain or shoulder pain. Plaintiff's records are relatively sparse, and indicate Plaintiff was treated only with medications. *R. at 354-368.*

Plaintiff was examined by Dr. Michael Karathanos, M.D., on December 16, 1992, and he concluded that Plaintiff had chronic low back pain. *R. at 210.* Dr. Karathanos noted that Plaintiff had a good gait. Dr. Karathanos additionally indicated Plaintiff could carry a maximum of twenty pounds occasionally, and ten pounds frequently. *R. at 211.* Plaintiff's standing/walking limitation was listed as three hours total in an eight hour day, and for one hour without interruption. *R. at 212.* Plaintiff's sitting ability was indicated as six hours per day, and two hours without interruption. *R. at 212.*

The ALJ discounted Dr. Karathanos' findings as inconsistent with the medical record and as not supported by Dr. Karathanos' own examination. An ALJ is given wide latitude in determining the credibility of testimony and in interpreting and weighing conflicting doctor reports. See, e.g., Tillery v. Schweiker, 713 F.2d 601, 603 (10th Cir. 1983). However, even if Dr. Karathanos' findings are discounted, the record contains no support for the ALJ's conclusions that Plaintiff can lift 50 pounds occasionally and twenty-five pounds frequently.

Although Plaintiff did attempt to return to work on three separate occasions, Plaintiff claims his back pain prevented him from continuing to work. Plaintiff's medical records do not indicate that he suffered a completely incapacitating back injury in August 1990. However, Dr. Crosby indicated that Plaintiff's back problems are progressive. In addition, as noted, nothing in the record indicates Plaintiff's residual functional capacity, or his ability to perform work at the medium level. Consequently, the ALJ's conclusion that Plaintiff can perform medium work is not supported by substantial evidence.

Step 4: Past Relevant Work

The ALJ determined that Plaintiff could perform his past relevant work as a material handler, janitor, and poultry processing worker.⁵¹ *R. at 28.* However, the

⁵¹ Plaintiff's vocational report indicated that he poured concrete for a construction company from March 1986 until November 1988; he worked as a custodian from February 1989 until January 1990; he ran a cutting torch from March 1990 until September 1990; he ran an electric magnet, moving layers of canned foods from pallets to a conveyor belt from June 1990 until November 1990; and he worked in a sanitation shop in May of 1991. *R. at 128-133.* Plaintiff additionally testified that he worked in the "chicken industry" for approximately three years, and in the construction industry for approximately three years. *R. at 65-66.*

record fails to provide substantial evidence that Plaintiff is able to perform his past relevant work.

Social Security Regulation 82-62 requires an ALJ to develop the record with respect to a claimant's past relevant work.

The decision as to whether the claimant retains the functional capacity to perform past work which has current relevance has far-reaching implications and must be developed and explained fully in the disability decision.

.
[D]etailed information about strength, endurance, manipulative ability, mental demands and other job requirements must be obtained as appropriate. This information will be derived from a detailed description of the work obtained from the claimant, employer, or other informed source. Information concerning job titles, dates work was performed, rate of compensation, tools and machines used, knowledge required, the extent of supervision and independent judgment required, and a description of tasks and responsibilities will permit a judgment as to the skill level and the current relevance of the individual's work experience.

Soc. Sec. Rep. Serv., Rulings 1975-1982, SSR 82-62 (West 1982). The ALJ must make specific factual findings detailing how the requirements of claimant's past relevant work fit the claimant's current limitations. The ALJ's findings must contain:

1. A finding of fact as to the individual's RFC.
2. A finding of fact as to the physical and mental demands of the past job/occupation.
3. A finding of fact that the individual's RFC would permit a return to his or her past job or occupation.

Soc. Sec. Rep. Serv., Rulings 1975-1982, SSR 82-62 (West 1982) (emphasis added); Washington v. Shalala, 37 F.3d 1437, 1442 (10th Cir. 1994); Henrie v. United States Dep't of Health & Human Services, 13 F.3d 359, 361 (10th Cir. 1993). The ALJ

failed to make the specific findings necessary to support the ALJ's conclusion that Plaintiff can perform her past relevant work.

The ALJ did consult the vocational expert and determine that Plaintiff's past relevant work was in the "medium" category. The ALJ concluded that Plaintiff could, therefore, perform his past relevant work. However, the ALJ did not detail the requirements of Plaintiff's past relevant work, and did not compare Plaintiff's mental and physical RFC to the demands of Plaintiff's work.

The Court finds that the ALJ's decision that Plaintiff was capable of performing his past relevant work is not supported by substantial evidence. On remand, if the ALJ determines Plaintiff has the physical capability to perform his past relevant work the ALJ should detail, in accordance with SSR 82-62, Plaintiff's RFC (mental and physical), the physical and mental demands of Plaintiff's past job, and Plaintiff's capability of performing his past job given any exertional or non-exertional limitations.

Mental Assessment

Plaintiff claims that he is impaired, in part, because of mental problems. Carolyn Goodrich, Ph.D., completed a Psychiatric Review Technique Form ("PRTF") on Plaintiff on November 13, 1991. Dr. Goodrich indicated Plaintiff did not have a severe impairment although Plaintiff did have an "explosive [personality] disorder." *R. at 179*. Dr. Goodrich completed a second PRTF on December 17, 1991. Plaintiff's mental impairment was marked as "not severe." Dr. Goodrich noted Plaintiff had "explosive personality traits." *R. at 166*. Dr. Goodrich concluded that Plaintiff "has

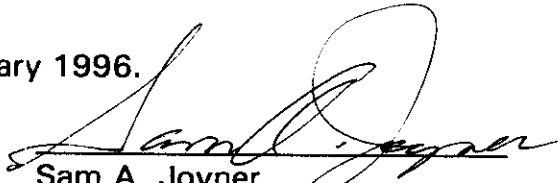
the social skills to interact appropriately at a superficial level with co-workers and supervisors, but not the general public." *R. at 172.*

Plaintiff was additionally examined by William J. Klontz, M.D., on October 29, 1991 for a psychiatric evaluation. *R. at 199.* Dr. Klontz concluded that Plaintiff has some restriction in his ability to relate to fellow workers and supervisors, and difficulty handling criticism. *R. at 201.* Dr. Klontz additionally indicated that Plaintiff had the ability to handle and follow instructions, sufficient attention span to perform typical work activities, and was capable of handling his own affairs. *R. at 201.*

The ALJ concluded that Plaintiff's mental impairment was not of Listing level severity, and that conclusion is supported by substantial evidence. In addition, the ALJ properly attached the PRTF to his decision. *R. at 29.* However, on remand, the ALJ should additionally determine what impairments, if any, Plaintiff's mental impairment could impose on his ability to perform work activity. (For example, Dr. Goodrich's conclusion that although Plaintiff can relate to fellow workers, he does not relate well to the general public.) Those impairments, if any, should then be included in the ALJ's analysis of whether Plaintiff can return to his past relevant work (Step Four), or, if a vocational expert is consulted (at Step Five), any impairments should be included in the hypothetical presented to the vocational expert.

Accordingly, the Secretary's decision is **REVERSED AND REMANDED.**

Dated this 5 day of February 1996.


Sam A. Joyner
United States Magistrate Judge

- 2-6-96

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TULSA DENTAL PRODUCTS LIMITED
PARTNERSHIP, an Oklahoma
Limited Partnership,

Plaintiff,

v.

MOYCO INDUSTRIES, INC.,
a Pennsylvania Corporation,

Defendant;

and

MOYCO INDUSTRIES, INC.,
a Pennsylvania Corporation,

Counterclaimant,

v.

TULSA DENTAL PRODUCTS
LIMITED PARTNERSHIP, an
Oklahoma Limited Partnership,

QUALITY DENTAL PRODUCTS, INC.,
a Tennessee Corporation, and

TULSA DENTAL PRODUCTS, L.L.C.,
an Oklahoma Limited Liability
Company,

Counterclaim Defendants.

FILED

FEB 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Civil Action No. 94-C 669H

ORDER OF DISMISSAL WITH PREJUDICE

On joint stipulation of the parties pursuant to their settlement and Rule 41(a)(2), all claims herein are dismissed with prejudice, with each party to bear its attorneys' fees and costs. The Court retains jurisdiction to enforce the terms of settlement, should that become necessary.

Dated this 5th FEBRUARY day of ~~January~~, 1996.

S/ SVEN ERIK HOLMES

HONORABLE SVEN ERIK HOLMES
United States District Judge

FILE

FEB - 5 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE 2-6-96

Civil Case No. 95 C 1064H

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of Feb 5, 1996 and the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendant, **Dovie Lee Fulbright fka Dovie Lee Johnson**, against whom judgment for affirmative relief is sought in this action have failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, RICHARD M. LAWRENCE, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter the default of said defendant.

Dated at Tulsa, Oklahoma, this 5th day of February, 1996.

RICHARD M. LAWRENCE, Clerk
United States District Court for
the Northern District of Oklahoma
by Mark C. McCartt Acting Clerk

By S. Adamo
Deputy

ENTERED ON DOCKET

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

2-6-96

FILED

FEB 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY CATHERINE SWAYNE;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

Civil Case No. 95-C 1084H

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2ND day of FEBRUARY,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendant, MARY CATHERINE SWAYNE, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, MARY CATHERINE SWAYNE, is a single, unmarried person.

The Court being fully advised and having examined the court file finds that the Defendant, MARY CATHERINE SWAYNE, acknowledged receipt of Summons and Complaint via certified mail on December 8, 1995.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed

their Answer on November 13, 1995; and that the Defendant, MARY CATHERINE SWAYNE, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Fifteen (15), Block One (1), THREE LAKES II, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof, LESS AND EXCEPT that part being more particularly described as follows, to-wit: BEGINNING at the Northeasterly corner of Lot 15, Block 1; thence Westerly along the North line of said Lot 15 on a curve to the right a distance of 36.36 feet to a point; thence Southwesterly a distance of 185.35 feet to the Southeasterly corner of said Lot 15; thence Northeasterly along the Easterly line of said Lot 15, a distance of 213.01 feet to the Point of Beginning.

The Court further finds that on November 20, 1987, the Defendant, MARY CATHERINE SWAYNE, executed and delivered to MORTGAGE CLEARING CORPORATION her mortgage note in the amount of \$38,821.00, payable in monthly installments, with interest thereon at the rate of 8.625% per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, MARY CATHERINE SWAYNE, a single person, executed and delivered to MORTGAGE CLEARING CORPORATION a mortgage dated November 20, 1987, covering the above-described property. Said mortgage was recorded on December 1, 1987, in Book 5067, Page 506, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 8, 1990, MORTGAGE CLEARING CORPORATION assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development its successors and assigns. This Assignment of Mortgage was recorded on February 12, 1990, in Book 5235, Page 2090, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 1, 1990, the Defendant, MARY CATHERINE SWAYNE, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on April 1, 1991 and April 1, 1992.

The Court further finds that the Defendant, MARY CATHERINE SWAYNE, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, MARY CATHERINE SWAYNE, is indebted to the Plaintiff in the principal sum of \$60,503.47, plus interest at the rate of 8.625 percent per annum from March 31, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$477.00, plus penalties and interest, for the year of 1995. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, MARY CATHERINE SWAYNE, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, MARY CATHERINE SWAYNE, in the principal sum of \$60,503.47, plus interest at the rate of 8.625 percent per annum from March 31, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$477.00, plus penalties and interest, for ad valorem taxes for the year 1995, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, MARY CATHERINE SWAYNE and BOARD OF COUNTY

COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, MARY CATHERINE SWAYNE, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$477.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ SVEN ERIK HOLM
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842

Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 1084H

LFR/lg

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

ROBERT L. WIRTZ,

Plaintiff,

vs.

RONALD J. CHAMPION, et al.,

Defendants.

FEB - 5 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

No. 93-C-920-B

ENTERED ON DOCKET
DATE FEB 06 1996

ORDER

On January 22, 1996, the Court granted Plaintiff's motion to stay proceedings and continued the non-jury trial pending resolution of Plaintiff's criminal charges in Colorado. This matter comes now before the court on Defendant Whatley's motion for summary judgment on the ground that Plaintiff has not responded to Defendant's first set of Requests for Admissions. Plaintiff responds that he "was in the process of denying the request [for admission] when he was illegally extradited [to Colorado]. . . on December 7, 1995." On December 14, 1995, Plaintiff filed a timely motion to stay proceedings because he did not have access to his files.

Accordingly, Defendant's motion for summary judgment (docket #64) is hereby DENIED. The Clerk shall mail to Plaintiff a copy of his Motion to Stay Proceedings.

SO ORDERED THIS 5 day of Feb., 1996.


THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

(67)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DELBERT HOWARD; LORETTA
HOWARD; MICHAEL DAVIS; KARLA
DAVIS; CITY OF BROKEN ARROW,
Oklahoma; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

ENTERED ON DOCKET
DATE FEB 06 1996

FILED

FEB 05 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

Civil Case No. 95-C 580K

ORDER

Upon the Motion of the United States of America, acting on behalf of the
Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney
for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States
Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed
without prejudice.

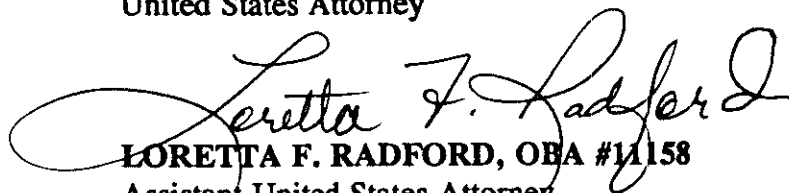
Dated this 5 day of February, 1996.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

A handwritten signature in cursive script, reading "Loretta F. Radford". The signature is written in black ink and is positioned above the printed name and title of the signatory.

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

LFR:flv

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 05 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

No. 95-C-318-

LORRIE ANN EVANS,
Plaintiff,

vs.

HERMAN MEEKS, and QUALITY
WOOD PRODUCTS,

Defendants.

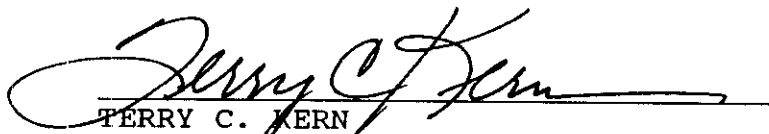
ENTERED ON CLERK
FEB 05 1996
DATE

ADMINISTRATIVE CLOSING ORDER

The Court has been advised that this action has settled or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within sixty (60) days that settlement has not been completed and further litigation is necessary.

ORDERED this 5 day of February, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

22

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 2 1996

THRIFTY RENT-A-CAR SYSTEM, INC.

Plaintiff,

vs.

CRS LEASING, INC., BRUCE SAUNDERS,
WILLIAM B. RHODES, HARRY E. COMER,
RHOMER SALES AND LEASING, INC.,
AND DONALD GOWDY,

Defendants.

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

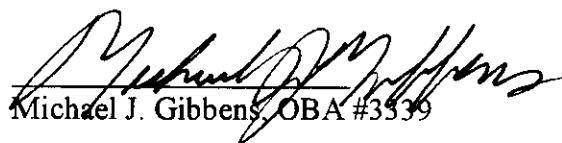
Case No. 95 C 703C

ENTERED ON 2/5/96
DATE FEB 05 1996

**STIPULATION FOR DISMISSAL WITH PREJUDICE
OF CLAIMS BETWEEN THRIFTY AND SAUNDERS**

Thrifty Rent-A-Car System, Inc. ("Thrifty") and Bruce Saunders ("Saunders") hereby stipulate that all claims between each of said parties in this litigation shall be dismissed with prejudice.

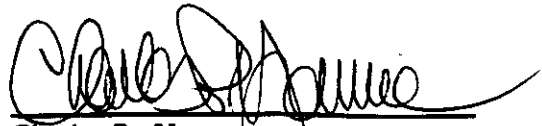
Respectfully submitted,


Michael J. Gibbens, OBA #3539

- Of the Firm -

CROWE & DUNLEVY
A Professional Corporation
321 S. Boston
500 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-9800

ATTORNEYS FOR PLAINTIFF
THRIFTY RENT-A-CAR SYSTEM, INC.



Charles P. Younce
JOHNSON, TANNER, COOKE, YOUNCE
& MOSELEY
Suite 500
400 West market Street
Greensborough, NC 27401

Attorneys for Defendant
Bruce Saunders

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 1996, I mailed a true and correct copy of the foregoing document, postage prepaid, to:

Charles P. Younce
Johnson, Tanner, Cooke, Younce
& Moseley
Suite 500
400 West Market Street
Greensborough, N.C. 27401



Michael J. Gibbons

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 1 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

JEAN F. TRIGALET and MYRA J. TRIGALET,
personal representative of the Estate of
of Constance Trigalet,

Plaintiffs,

v.

CITY OF TULSA, OKLAHOMA, a municipal
corporation, et al.,

Defendants.

Case No. 92-C-368-H

ENTERED ON DOCKET

2-5-96

JEAN F. TRIGALET, personal
representative of the Estate of
Martha Annette Trigalet,

Plaintiff,

v.

CITY OF TULSA, OKLAHOMA, a municipal
corporation, et al.,

Defendants.

Case No. 92-C-369-H
(Consolidated for
trial with Case No.
92-C-368-H)

LEONARD L. MUNSON, personal
representative of the Estate of
Steven Lewis Munson,

Plaintiff,

v.

CITY OF TULSA, OKLAHOMA, a municipal
corporation, et al.,

Defendants.

Case No. 92-C-370-H
(Consolidated for
trial with Case No.
92-C-368-H)

ORDER

This matter comes before the Court on Plaintiffs' Motion to Revise (Docket #72) the
Court's order entered November 23, 1993.

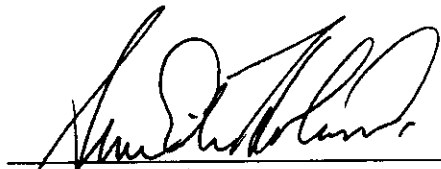
91

Plaintiffs brought this action pursuant to 42 U.S.C. § 1983 against the City of Tulsa and certain city police officers in both their individual and official capacities. In an order entered March 30, 1993, the Court dismissed Plaintiffs' claims against all Defendants. Upon Plaintiffs' motion to reconsider, the Court subsequently vacated its prior order in part, denying qualified immunity to the officers in their individual capacities. The Court of Appeals for the Tenth Circuit reversed, holding that the individual officers were entitled to qualified immunity. Trigalet v. Young, 54 F.3d 645 (10th Cir. 1995). Plaintiffs then filed this Motion to Revise, requesting that they be allowed to pursue their claims against the City of Tulsa and the officers in their official capacities.

Based upon the facts of this case, the Court concludes that Plaintiffs should be allowed to continue their claim against the City of Tulsa. The November 23, 1993 order is therefore vacated in part, and Plaintiffs' cause of action against the City of Tulsa is hereby reinstated. The remainder of the Motion to Revise as it relates to the officers in their official capacities is hereby denied.

IT IS SO ORDERED.

This 31st of January, 1996.


Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 1 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,
on behalf of the Secretary of Housing
and Urban Development,

Plaintiff,

v.

DAVID L. DOWELL;
TERESA L. DOWELL;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

ENTERED ON DOCKET
FEB 05 1996
DATE _____

CIVIL ACTION NO. 95-C-431-B

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

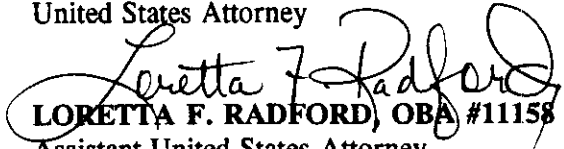
Dated this 1 day of Feb., 1996.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

LFR:css

NOTE: THIS ORDER IS TO BE MAILED
BY COUNSEL TO ALL COUNSEL AND
PEOPLE INVOLVED IMMEDIATELY
UPON RECEIPT.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,
on behalf of Rural Housing and Community
Development Service, formerly Farmers Home
Administration,

Plaintiff,

v.

DONALD R. DEACON aka Donald Ray Deacon;
PAULA F. DEACON aka Paula Faye Deacon;
66 FEDERAL CREDIT UNION;
COUNTY TREASURER, Nowata County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Nowata County, Oklahoma,

Defendants.

FEB - 1 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE FEB 05 1996

CIVIL ACTION NO. 95-C-1069-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 1st day of Feb.,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney; the Defendants, County Treasurer, Nowata County, Oklahoma, and Board of County Commissioners, Nowata County, Oklahoma, appear by Lisa Birdwell, Assistant District Attorney, Nowata County, Oklahoma; the Defendant, 66 Federal Credit Union, appears by its Assistant Vice President Michael J. Moyer; and the Defendants, Donald R. Deacon aka Donald Ray Deacon and Paula F. Deacon aka Paula Faye Deacon, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Donald R. Deacon aka Donald Ray Deacon, executed a Waiver of Service of

Summons on October 30, 1995 which was filed on November 2, 1995; that the Defendant, **Paula F. Deacon aka Paula Faye Deacon**, executed a Waiver of Service of Summons on October 30, 1995 which was filed on November 2, 1995; that the Defendant, **66 Federal Credit Union**, executed a Waiver of Service of Summons on October 26, 1995 which was filed on October 30, 1995.

It appears that the Defendants, **Donald R. Deacon aka Donald Ray Deacon and Paula F. Deacon aka Paula Faye Deacon**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on March 13, 1992, Donald Ray Deacon and Paula Faye Deacon filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 92-00840-W. The subject property of this action was included in the bankruptcy as set forth in Schedule A - Real Property. On April 20, 1992, the debtors executed a Reaffirmation Agreement with Farmers Home Administration, now known as Rural Housing and Community Development Service. Case No. 92-00840-W, United States Bankruptcy Court for the Northern District of Oklahoma, was closed on November 5, 1992.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of a mortgage securing said promissory note upon the following described real property located in Nowata County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 1, in Block 3, McConkey Addition, to the Town of Lenapah, Oklahoma.

The Court further finds that on December 17, 1980, James S. Powell executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, his promissory note in the amount of \$27,000.00, payable in monthly installments, with interest thereon at the rate of 12 percent per annum.

The Court further finds that as security for the payment of the above-described note, James S. Powell, a single man, executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, a real estate mortgage dated December 17, 1980, covering the above-described property, situated in the State of Oklahoma, Nowata County. This mortgage was recorded on December 18, 1980, in Book 522, Page 197, in the records of Nowata County, Oklahoma.

The Court further finds that on July 16, 1982, Donald R. Deacon and Paula F. Deacon executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, an Assumption Agreement thereby assuming liability for the amount due and owing on the above-described note and mortgage.

The Court further finds that on January 8, 1985, Donald R. Deacon and Paula F. Deacon executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that on July 16, 1982, July 5, 1984, January 8, 1985, Donald R. Deacon and Paula F. Deacon executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, Interest Credit Agreements pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on December 16, 1994, the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, released James S. Powell, a single man, from personal liability to the government for the indebtedness and obligation of the above-described note and mortgage.

The Court further finds that the Defendants, **Donald R. Deacon aka Donald Ray Deacon and Paula F. Deacon aka Paula Faye Deacon**, made default under the terms of the aforesaid note, mortgage, assumption agreement, reamortization and/or deferral agreement, and interest credit agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Donald R. Deacon aka Donald Ray Deacon and Paula F. Deacon aka Paula Faye Deacon**, are indebted to the Plaintiff in the principal sum of \$26,132.31, plus accrued interest in the amount of \$10,149.26 as of August 15, 1995, plus interest accruing thereafter at the rate of 12 percent per annum or \$8.5914 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$5,703.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, **Donald R. Deacon aka Donald Ray Deacon and Paula F. Deacon aka Paula Faye Deacon**, are in default and therefore have no right, title or interest in the subject property.

The Court further finds that the Defendant, **66 Federal Credit Union**, has liens on the property which is the subject matter of this action in the amount due and owing on a mortgage dated November 6, 1990, and recorded in Book 593, Page 193 in the records of Nowata County, Oklahoma; and in the amount of \$7,342.03, plus \$750.00 attorney fees, plus \$93.58 court costs, plus interest, by virtue of a judgment, Case No. CJ-94-287, District Court, Nowata, Oklahoma. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **County Treasurer, Nowata County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$220.44, plus penalties and interest, for the year 1995. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **County Treasurer, Nowata County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$1.32 which became a lien on the property as of 1995. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **Board of County Commissioners, Nowata County, Oklahoma**, claims no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Rural Housing and Community Development Service, have and recover judgment against the Defendants,

Donald R. Deacon aka Donald Ray Deacon and Paula F. Deacon aka Paula Faye Deacon, in the principal sum of \$26,132.31, plus accrued interest in the amount of \$10,149.26 as of August 15, 1995, plus interest accruing thereafter at the rate of 12 percent per annum or \$8.5914 per day until judgment, plus interest thereafter at the current legal rate of 5.16 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$5,703.00, plus interest thereafter at the current legal rate of 5.16 percent per annum until fully paid, plus the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the The Defendant, **66 Federal Credit Union**, have and recover judgment in the amount due and owing on a mortgage dated November 6, 1990, and recorded in Book 593, Page 193 in the records of Nowata County, Oklahoma; and in the amount of \$7,342.03, plus \$750.00 attorney fees, plus \$93.58 court costs, plus interest, by virtue of a judgment, Case No. CJ-94-287, District Court, Nowata, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Nowata County, Oklahoma**, have and recover judgment in the amount of \$220.44, plus penalties and interest, for ad valorem taxes for the year 1995, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Nowata County, Oklahoma**, have and recover judgment in

the amount of \$1.32 for personal property taxes for the year 1995, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Donald R. Deacon aka Donald Ray Deacon; Paula F. Deacon aka Paula Faye Deacon; and Board of County Commissioners, Nowata County, Oklahoma**, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, **Donald R. Deacon aka Donald Ray Deacon and Paula F. Deacon aka Paula Faye Deacon**, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Nowata County, Oklahoma, ad valorem taxes;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the judgment rendered herein in favor of the Defendant, 66 Federal Credit Union;

Fifth:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Nowata County, Oklahoma, for personal property taxes.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE


APPROVED:

STEPHEN C. LEWIS
United States Attorney



CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Case No. 95-C-1069-B (Deacon)


LISA BIRDWELL, OBA #016178

Assistant District Attorney

229 North Maple

Nowata, Oklahoma 74048

(918) 273-3167

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Nowata County, Oklahoma

Judgment of Foreclosure
Case No. 95-C-1069-B (Deacon)



MICHAEL J. MOYER
Assistant Vice President
66 Federal Credit Union
P.O. Box 1358
Bartlesville, Oklahoma 74005
(918)

Judgment of Foreclosure
Case No. 95-C-1069-B (Deacon)

CDM:cas

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 1 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

LELON QUILLEN,

Petitioner,

vs.

RON WARD,

Respondent.

No. 96-C-63-B

ENTERED ON DOCKET

DATE FEB 05 1996

ORDER OF TRANSFER

Before the court are Petitioner's motion for leave to proceed in forma pauperis and an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Upon review of the petition, it has come to the court's attention that Petitioner was convicted in Lincoln County, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma. Therefore, in the furtherance of justice, this matter may be more appropriately addressed in that district. **ACCORDINGLY, IT IS HEREBY ORDERED that:**

- (1) Petitioner's motion for leave to proceed in forma pauperis is **granted**; and
- (2) Petitioner's application for a writ of habeas corpus is **transferred** to the Western District of Oklahoma for all further proceedings. See 28 U.S.C. § 2241(d).

IT IS SO ORDERED this 01st day of Jan, 1995.


THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -1 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

M.A. MORTENSON COMPANY,
Plaintiff,

vs.

ARKANSAS ELECTRIC COOPERATIVE
CORPORATION, and THE BENHAM
GROUP, INC.,

Defendants.

Case No. 95-C-966-B

ENTERED ON DOCKET

FEB 05 1996

DATE

ORDER

Before the Court is Defendant Arkansas Electric Cooperative Corporation's Motion to Dismiss for Improper Venue, or, in the alternative, to Transfer Venue (Docket #15).

Minnesota-based Plaintiff M.A. Mortenson Company ("Mortenson") has filed various causes of action against the defendants stemming from an alleged breach of a contract between Mortenson and Defendant Arkansas Electric Cooperative Corporation ("AECC") and The Benham-Holway Power Group, a division of Defendant The Benham Group, Inc. ("Benham"), relating to creation of a hydroelectric generating station near Morrilton, Arkansas. Defendant AECC seeks to have this case dismissed for improper venue or transferred to the United States District Court for the Eastern District of Arkansas.¹

¹Venue as to Benham is not in dispute.

33

I. VENUE

Venue is proper in diversity cases in the following districts:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, [or] (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred....

28 U.S.C. § 1391(a).

Corporations, however, can be deemed residents of a judicial district for the purposes of § 1391(a)(1) under the following circumstances:

For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State

28 U.S.C. § 1391(c).

AECC alleges that personal jurisdiction for the purposes of § 1391(c) is general personal jurisdiction, not specific personal jurisdiction, and that there was no such general jurisdiction over AECC at the time this action was commenced.² AECC also alleges

²AECC, in its Motion to Dismiss, does not address §§ 1391(a)(1) or (c); rather, it addresses only § 1391(a)(2). Because Mortenson primarily alleges venue under §§ 1391(a)(1) and (c) and the Court finds venue thereunder, the Court finds it unnecessary to address § 1391(a)(2). AECC did, however, address §§ 1391(a)(1) and (c) in its Reply Brief.

that, assuming *arguendo* that specific jurisdiction is appropriate, such contacts have ended and were not continuing at the time this lawsuit was filed.

A. Personal Jurisdiction

The Court first addresses AECC's contention that the personal jurisdiction required for venue under § 1391(c) is general instead of specific. AECC has provided no support for this contention, and the Court has found none. The clear language of § 1391(c) does not require general jurisdiction; rather, it states only that venue is appropriate in any district "in which [the corporation] is subject to personal jurisdiction". Further, the Comment to § 1391(c) states that the present version of the statute authorizes venue

in any district in which a state longarm statute would be applicable to justify extrastate service....Whenever a state longarm statute applies, enabling the plaintiff to secure personal jurisdiction of the corporate defendant regardless of where the defendant has been served with process, a district in that state now qualifies ipso facto as proper venue as against that defendant.

See also 15 Wright, Miller & Cooper, Federal Practice and Procedure, § 3811 (Supp. 1995), which states:

[A] corporation is now deemed to reside "in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced". This equating of the tests for personal jurisdiction and for venue had been the better view under the former statute...

Therefore, in determining venue for corporations under § 1391(c), the question is whether the Court has personal

jurisdiction under Oklahoma's long-arm statute. "Whether a federal court has personal jurisdiction over a nonresident defendant in a diversity action is determined by the law of the forum state." Yarbrough v. Elmer Bunker & Assoc., 669 F.2d 614, 616 (10th Cir. 1982). Oklahoma's long-arm statute, 12 O.S. § 2004(f), states that "[a] court of this state may exercise jurisdiction on any basis consistent with the Constitution of the United States". See Rambo v. American Southern Ins. Co., 839 F.2d 1415, 1416 (10th Cir. 1988). In other words, if federal due process standards are met, the Court has personal jurisdiction pursuant to Oklahoma's long-arm statute.

1. Minimum Contacts

The United States Supreme Court held that, before jurisdiction can be exercised, the Due Process Clause of the Fourteenth Amendment requires minimum contacts between the state exercising personal jurisdiction and the defendant. International Shoe Co. v. State of Washington, et al., 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed.2d 95 (1945). It is critical to due process that "defendant's conduct and connection with the forum state are such that he would reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980); Burger King v. Rudzewicz, 471 U.S. 462 (1985).

The first issue is whether AECC has established sufficient minimum contacts with Oklahoma so that exercising personal jurisdiction would not offend due process. This analysis must focus on whether AECC's contacts represent an effort by the

defendant to purposefully avail itself of the privilege of conducting activities within the forum state that invoke the benefits and protection of the forum's laws. Hanson v. Denckla, 355 U.S. 235, 253 (1958); Burger King, 471 U.S. at 474. A minimum contacts inquiry must focus on the totality of the relationship between the defendant and the forum state. Colwell v. Triple T, 785 F.2d 1330 (5th Cir. 1986); All American Car Wash v. NPE, 550 F. Supp. 166 (W.D. Okla. 1981). "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." Hanson, 357 U.S. at 253. Further, contracting with an out-of-state party alone cannot automatically "establish sufficient minimum contacts in the other party's home forum." Burger King, 471 U.S. at 478.

AECC primarily alleges that the specific contacts relied upon by Mortenson are insufficient to find venue (i.e., personal jurisdiction). AECC does not dispute the contacts alleged by Mortenson; rather, AECC merely alleges that such specific contacts are insufficient to find personal jurisdiction for venue purposes.

The Court finds that AECC has sufficient minimum contacts with the state of Oklahoma based on the fact that AECC hired Benham, a Tulsa-based engineering firm, as its engineer, project manager and on-site representative for the Morrilton, Arkansas, project. Actions taken by Benham in Oklahoma as AECC's agent, for which AECC could be vicariously liable on a theory of respondeat superior, can

be imputed to AECC.³ AECC authorized Benham to contact Mortenson and solicit a proposal for construction of the project. This solicitation was made by Benham from its Tulsa office. (Complaint, ¶ 11; AECC's Answer ¶ 11). Mortenson was directed to respond to Benham in Tulsa. (Barbato Aff. ¶ 8) Further, AECC representatives attended six meetings in Tulsa regarding the project. (Complaint ¶ 9; AECC's Answer ¶ 9; Barbato Aff. ¶ 8). The Court finds that these contacts, combined with the other undisputed contacts delineated in Mortenson's Response Brief, are sufficient to meet the minimum contacts requirement. AECC's continued presence in Oklahoma is not required in order to allow courts in Oklahoma exercise personal jurisdiction. "It is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a state in which business is conducted." Burger King, 471 U.S. at 475.

2. Fairness

The second prong of the personal jurisdiction analysis is analyzing whether it would be unfair to hale AECC into court in Oklahoma, notwithstanding the fact that sufficient minimum contacts do exist. "Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts

³See Hough v. Leonard, 867 P.2d 438, 444 (Okla. 1993) ("[T]he non-residents hired an Oklahoma company, in which [plaintiff] was a subcontractor...[T]he non-residents could have refused to enter into a contract and thereby alleviated the risk of defending a suit commenced in Oklahoma.")

may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice'," Burger King, 471 U.S. at 476. The exercise of personal jurisdiction must be reasonable. Rambo, 839 F.2d at 1419, n.6. To defeat otherwise proper jurisdiction, a defendant must show a "compelling case that the presence of some other considerations would render jurisdiction unreasonable." Kennedy v. Freeman, 919 F.2d 125, 129 (10th Cir. 1990), citing Burger King, *supra*.

AECC challenges only the minimum contacts prong of the personal jurisdiction test. The Court finds jurisdiction reasonable in this case; no other considerations have been put forth that indicate a compelling case of unreasonable jurisdiction. Therefore, the Court holds that AECC has sufficient contacts with the state of Oklahoma such that it would not offend traditional notions of fair play and substantial justice to subject AECC to personal jurisdiction in Oklahoma.

B. Temporal Requirement

AECC alleges that any contacts it had with the state of Oklahoma ended long ago and were not continuing at the time this lawsuit was filed; therefore, venue is improper. AECC bases this position on § 1391(c), which states that "a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time an action is commenced" [emphasis added].

The Comment to § 1391 states that the commencement of the action is the key time in measuring many bases of jurisdiction. However, the Comment further states that:

Some of the jurisdictional bases a plaintiff may rely on to show proper venue against a defendant will exist without regard to when the action is commenced. They will depend on other factors that make the time of commencement irrelevant. With longarm jurisdiction, for example, the jurisdiction will be based on the contacts that the defendant had with the state earlier, when the defendant performed the acts out of which the claim arises. If the defendant had such contacts, they freeze in time and stand ready at all times to supply longarm jurisdiction. Hence, for both jurisdiction and for venue in a longarm case, the moment of commencement of the action won't matter

Therefore, the fact that AECC's contacts with Oklahoma occurred prior to the filing of the cause of action is irrelevant to the determination of venue in this case.

C. Multiple Federal Judicial Districts

Because Oklahoma has multiple federal districts, § 1391(c) requires the Court to determine not only that AECC has sufficient contacts with Oklahoma, but that AECC has sufficient contacts with the Northern District of Oklahoma, as "if that district were a separate State". 28 U.S.C. § 1391(c). The Court notes that all of AECC's Oklahoma contacts are either in Tulsa, or through Benham, which primarily acted through its Tulsa office. Therefore, the Court holds that AECC has sufficient contacts with the Northern District of Oklahoma.

D. Summary

Because personal jurisdiction is found as to AECC, the Court holds that AECC is deemed a resident of the Northern District of Oklahoma for venue purposes under § 1391(c). Therefore, the Court holds that venue is proper as to AECC under § 1391(a)(1). AECC's Motion to Dismiss is denied.

II. TRANSFER

Because venue is proper in the Northern District of Oklahoma, the Court considers AECC's alternative Motion to Transfer under 28 U.S.C. § 1404(a), which provides:

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The party requesting a § 1404(a) transfer bears the burden of establishing that the existing forum is inconvenient. Chrysler Credit Corp. v. County Chrysler, Inc., 928 F.2d 1509, 1515 (10th Cir. 1991). Unless the balance is strongly in favor of the movant, the plaintiff's choice of forum should rarely be disturbed. Scheidt v. Klein, 956 F.2d 963, 965 (10th Cir. 1992).

A. Factors to Consider

The Tenth Circuit Court of Appeals, in Chrysler Credit Corp., listed nine factors to consider in a motion to transfer pursuant to § 1404(a):

Among the factors [a district court] should consider is the plaintiff's choice of forum,

the accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure attendance of witnesses; the cost of making the necessary proof; questions as to the enforceability of a judgment if one is obtained; relative advantages and obstacles to a fair trial difficulties that may arise from congested dockets; the possibility of the existence of questions arising in the area of conflict of laws; the advantage of having a local court determine questions of local law; and, all other considerations of a practical nature that make a trial easy, expeditious and economical.

Chrysler Credit Corp., 928 F.2d at 1516. The Court will consider each factor in turn.

1. **Plaintiff's choice of forum:** As noted above, the plaintiff's choice of forum should rarely be disturbed. Scheidt, 956 F.2d at 965. AECC alleges that Mortenson should not be allowed this traditional deference because Mortenson did not choose its home forum. Mortenson did, however, choose a forum in which one of the defendants in this case, Benham, has an office and in which many of the underlying circumstances of this case allegedly occurred. Therefore, the traditional deference given to a plaintiff's choice of forum will be considered in this analysis.

2. **Accessibility of witnesses and other sources of proof.** AECC alleges that "virtually all" of its employees and other witnesses are located in Arkansas and outside this Court's compulsory process. AECC specifically mentions six AECC engineering employees who live in the Eastern District of Arkansas, five non-party witnesses from Anderson Engineering, whose home office is in the Eastern District of Arkansas, and three Benham

witnesses who live and work in the Eastern District of Arkansas.

The Scheidt court, in determining whether to transfer a case because, among other things, eight witnesses were from the proposed transferee court, noted that denying transfer was proper if "nothing has been submitted ... to indicate the quality or materiality of the testimony of said witnesses, nor has Defendant shown that any such witnesses were unwilling to come to trial in Oklahoma...; that deposition testimony would be unsatisfactory; or that the use of compulsory process would be necessary." Id. at 966. Here, AECC has not stated to the Court in its motion whether the witnesses mentioned would be unwilling to come to trial in Oklahoma, whether deposition testimony would be unsatisfactory and whether subpoenas would be necessary. This, Scheidt states, "fail[s] to demonstrate the requisite inconvenience to [Defendant's] witnesses." Id. See also Hess Oil Virgin Islands Corp. v. UOP, Inc., 447 F. Supp. 381, 384 (N.D. Okla. 1978) (the movant, in providing a list of witnesses as support for a transfer motion, must "indicate which persons would in fact be called...how their testimony would be material and important, or why their testimony could not be presented in the form of a deposition").

AECC also alleges that access to books and records also favors the Eastern District of Arkansas, because relevant documents are "voluminous" (100 file boxes) and all are in Arkansas. AECC states that moving those records would be a tremendous inconvenience. AECC, however, has not explained "why these documents could not be sifted through [in Arkansas] and the probative ones shipped at

relatively minor cost to Oklahoma for trial." Id. Without this showing, Scheidt states, the fact that documents are located in another forum is not an adequate justification for transfer.

3. Cost of making the necessary proof. AECC alleges that its engineering personnel, who would be called as witnesses in this case, are also those employees who would be called during any power outage emergency that may arise in Arkansas. If an outage or other emergency occurred during trial and those witnesses were in Tulsa, "the ramifications would be serious not only for AECC, but also for the thousands of Arkansans who would be affected by AECC's inability to respond as quickly as it should in such a situation." (AECC's Motion to Transfer, p. 7) Further, AECC alleges, keeping these employees away from their daily tasks "seems likely to put the integrity of AECC's system unnecessarily at risk". This argument is speculative on several grounds: that an emergency will occur, that all key personnel will be in Tulsa at the same time, and that all key personnel will be in Tulsa for a long length of time. Even so, the Court finds that this is the only factor that militates in favor of AECC.

4. Enforceability of a judgment. Because a judgment from the Northern District of Oklahoma would be enforceable in Arkansas (or in Minnesota), this factor does not support transfer. The fact that such judgment would have to be registered in the state in which it is to be enforced is a minor consideration and does not support transfer.

5. Relative advantages and obstacles to a fair trial. AECC

does not allege that it would be unable to receive a fair trial in the Northern District of Oklahoma.

6. Difficulties from congested dockets. AECC states that trial could be held sooner in the Eastern District of Arkansas than in the Northern District of Oklahoma. AECC says that a comparison of historical case disposition rates shows that trial could begin three months sooner if held in the Eastern District of Arkansas.

Mortenson, however, alleges that the Federal Court Management Statistics for 1994 show that there are fewer cases in this district, both overall and per judge, and that the median disposition time for a civil case in this district is nine months, compared to ten months in the Eastern District of Arkansas. Either way, delay in this district in reaching trial, if any, would not be significant and does not support transfer.

7. Conflict of laws. AECC states that Arkansas law will apply to this contract dispute because the contract was executed and delivered in Arkansas. Mortenson, however, alleges that Oklahoma choice of law rules require application of Oklahoma law to several of the claims in this lawsuit. While not deciding the choice of law issue at this time, it appears that Oklahoma law may apply at least to Mortenson's tort claims.

8. Advantage of having a local court determine questions of local law. If Oklahoma law applies in part, and Arkansas law applies in part, this factor does not support transfer.


9. Other considerations. AECC alleges that trial in the Eastern District of Arkansas would be more convenient for it than

trial in this Court. Further, AECC alleges that trial in Little Rock will not inconvenience Mortenson any more than trial in Tulsa would, since there are an equal number of flights per day from Minnesota to each site. However, the Court notes that judicial economy militates in favor of the Northern District of Oklahoma, where both defendants could be tried together, instead of transferring the case against AECC to the Eastern District of Arkansas and proceeding against each defendant separately.

B. Summary

AECC has not made a strong enough showing of inconvenience that would allow the Court disturb Plaintiff's choice of forum. Therefore, AECC's motion to dismiss, or in the alternative, to transfer to a more convenient forum is denied.

IT IS SO ORDERED this 15th day of February, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -2 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

KENNETH L. HALE,

Plaintiff,

v.

BURLINGTON NORTHERN
RAILROAD COMPANY,

Defendant.

Case No. 95-C-14-H

ENTERED ON DOCKET

DATE 2-5-96

STIPULATION TO DISMISSAL WITH PREJUDICE

COME NOW Plaintiff and Defendant and stipulate to the dismissal of the above styled and numbered cause with prejudice, each party to bear its own costs and attorney fees.

Respectfully submitted,

FRASIER, FRASIER & HICKMAN

By: 

Steven R. Hickman OBA#4172
1700 Southwest Blvd., Suite 100
P.O. Box 799
Tulsa, OK 74101-0799
918/584-4724
Attorney for Plaintiff

and

BURLINGTON NORTHERN RAILROAD

By: 

Charles W. Shewmake, Assistant General Counsel
777 Main Street, Suite 3800
Ft. Worth, TX 76102
817/333-2384
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 2 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

GARY LADD,

Plaintiff,

v.

Case No. 95-C-499-H

SERTOMA HANDICAPPED
OPPORTUNITY PROGRAM, INC.,
an Oklahoma corporation, and
CLARENCE CAGLE,

Defendants.

FILED ON DOCKET

DATE 2-5-96

ORDER OF DISMISSAL WITH PREJUDICE

THIS matter came on before the Court this 1st day of February, 1996, upon the parties' Joint Stipulation of Dismissal with Prejudice, and for good cause shown, it is therefore,

ORDERED, ADJUDGED AND DECREED, that Plaintiff's cause of action against Defendants, Sertoma Handicapped Opportunity Program and Clarence Cagle, is hereby dismissed with prejudice with each party to bear its own costs and attorney fees.

S/ SVEN ERIK HOLMES

DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

v.

LOUIS B. GRANT, JR.; CHARLES B.
GRANT; J. LAWRENCE MILLS, JR.;
KEITH G. GOLLUST; PAUL E. TIERNEY, JR.;
EDWARD L. JACOBY; ROD L. REPPE;
DONALD BERGMAN; WILLIAM
BRUMBAUGH; EDWARD H. HAWES;
JAMES R. MALONE; ROBERT B. RISS;
ROBIN K. BUEREGE; and W.R. HAGSTROM,

Defendants.

Case No. 92-C-1043-H ✓

FILED

FEB 1 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ORDER

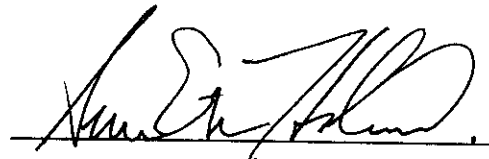
This matter comes before the Court pursuant to Plaintiff's "Abandonment of Claims" (Docket #263).

The Court has previously defined the Group I Defendants to include Edward H. Hawes, James R. Malone, Robert B. Riss, William M. Brumbaugh, and Donald Bergman. Pursuant to Plaintiff's "Abandonment of Claims", the Court hereby dismisses with prejudice all claims stated in Plaintiff's Second Amended Complaint against the Group I Defendants with the exception of any claim which relates in any way to Sooner Federal Savings and Loan Association's sale-leaseback transaction with Parker North American Corporation.

Further, the Court clarifies its scheduling order entered December 21, 1995, rendering it applicable only to the Group I Defendants. The non-Group I Defendants are not required to comply with the dates set forth in the December 21 scheduling order.

IT IS SO ORDERED.

This 1st day of February, 1996.



Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TERRY WAYNE WATSON;
UNKNOWN SPOUSE IF ANY OF
TERRY WAYNE WATSON; EDWARD
LEON REA; UNKNOWN SPOUSE IF
ANY OF EDWARD LEON REA; STATE
OF OKLAHOMA ex rel OKLAHOMA
TAX COMMISSION; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

FEB 5 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95-C 697H

ENTERED ON DOCKET

DATE 2-5-96

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of February 2, 1996 and
the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendants,
**TERRY WAYNE WATSON, UNKNOWN SPOUSE IF ANY OF TERRY WAYNE
WATSON, EDWARD LEON REA, and UNKNOWN SPOUSE IF ANY OF EDWARD
LEON REA**, against whom judgment for affirmative relief is sought in this action have
failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure;
now, therefore,

I, RICHARD M. LAWRENCE, Clerk of said Court, pursuant to the
requirements of Rule 55(a) of said rules, do hereby enter the default of said defendants.

Dated at Tulsa, Oklahoma, this 2nd day of Feb, 1996

RICHARD M. LAWRENCE, Clerk
United States District Court for
the Northern District of Oklahoma
By S. Adamski
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB - 1 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LUTHERAN BENEVOLENT INSURANCE
COMPANY,

Plaintiff,

v.

THE NATIONAL CATHOLIC RISK RETENTION
GROUP, INC.,

Defendant.

Case No. 94-C-124-H ✓

ENTERED ON DOCKET

DATE 2-2-96

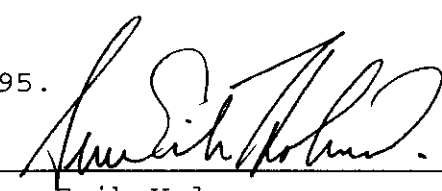
J U D G M E N T

The Court duly considered the issues and rendered a decision
in accordance with the order filed on August 14, 1995.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is
hereby entered for the Plaintiff and against the Defendant in the
amount of \$562,238.92.

IT IS SO ORDERED.

This 1ST day of February, 1995.


Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 2-2-96

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EMERY V. TOTTRRESS; JACQUELYN
D. TOTTRRESS; STATE OF
OKLAHOMA ex rel OKLAHOMA TAX
COMMISSION; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

FILED

FEB 1 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Civil Case No. 95-C 301H ✓

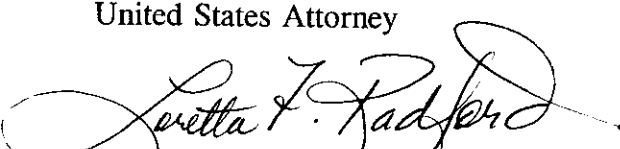
ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

Dated this 31ST day of JANUARY, 1996.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:
STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
333 W. 4th St., Ste. 3460
Tulsa, Oklahoma 74103
(918) 581-7463
LFR:lg

7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BRANDY LYNN ESTELL,

Plaintiff,

vs.

A-1 FREEMAN NORTH AMERICAN, INC.
an Oklahoma Corporation;
A-1 MOVERS, INC.,
an Oklahoma Corporation;
A-1 METRO MOVERS OF KANSAS, INC.,
a Kansas Corporation; and
RICK DYER, an Individual,

Defendants.

Case No. 95-C-1244H

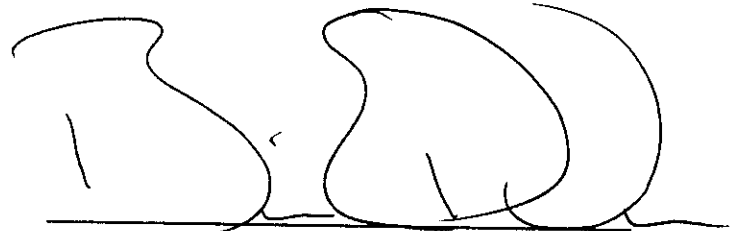
JURY TRIAL DEMANDED

ENTERED ON DOCKET

DATE 2-2-96

VOLUNTARY DISMISSAL

Plaintiff Brandy Estell hereby dismisses the above-styled and numbered cause as to
Defendants A-1 Metro Movers of Kansas, Inc. and Rick Dyer.



Brian E. Duke, OBA #14710
WHITE, HACK & DUKE, P.A.
111 West 5th Street, Suite 510
Tulsa, Oklahoma 74103
(918) 582-7888
ATTORNEY FOR THE PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of January, 1996, a true and correct copy of the above and foregoing was deposited in the U.S. Mails with proper postage thereon fully prepaid to the following:

Rick Dyer
A-1 Metro Movers of Kansas, Inc.
2938 S. Minneapolis
Wichita, KS 67216



Brian E. Duke

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -1 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

TULSA DENTAL PRODUCTS LIMITED
PARTNERSHIP, an Oklahoma
Limited Partnership,

Plaintiff,

v.

MOYCO INDUSTRIES, INC.,
a Pennsylvania Corporation,

Defendant;

and

MOYCO INDUSTRIES, INC.,
a Pennsylvania Corporation,

Counterclaimant,

v.

TULSA DENTAL PRODUCTS
LIMITED PARTNERSHIP, an
Oklahoma Limited Partnership,

QUALITY DENTAL PRODUCTS, INC.,
a Tennessee Corporation, and

TULSA DENTAL PRODUCTS, L.L.C.,
an Oklahoma Limited Liability
Company,

Counterclaim Defendants.

Civil Action No. 94-C 669H

ENTERED ON DOCKET

FEB 2-2-96

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to a settlement by and among the parties and Rule 41(a)(2), all parties hereby stipulate that the attached Order of Dismissal with Prejudice may be entered.

Respectfully submitted,

By: John A. Kenney

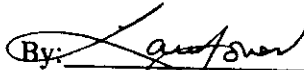
John A. Kenney
McAFEE & TAFT

10th Floor, Two Leadership Square
Oklahoma City, Oklahoma 73102
(405) 235-9621

C. Clark Dougherty, Jr.
DOUGHERTY, HESSIN, BEAVERS & GILBERT
Two Leadership Square
211 North Robinson, Suite 1400
Oklahoma City, Oklahoma 73102
(405) 232-5586

Dennis D. Brown
DOUGHERTY, HESSIN, BEAVERS & GILBERT
Williams Center Tower One
One West 3rd Street, Suite 1110
Tulsa, Oklahoma 74103
(918) 592-6970

**ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIMANT, MOYCO
INDUSTRIES, INC.**

By: 

Larry C. Jones
George M. Taulbee
BELL, SELTZER, PARK & GIBSON
1211 East Morehead Street
P. O. Drawer 34009
Charlotte, North Carolina 28234
(704) 331-6000

Mark S. Rains
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, Oklahoma 74103
(918) 585-9211

**ATTORNEYS FOR COUNTERCLAIM
DEFENDANTS, TULSA DENTAL PRODUCTS
LIMITED PARTNERSHIP, QUALITY
DENTAL PRODUCTS, INC., and TULSA
DENTAL PRODUCTS, L.L.C.**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TULSA DENTAL PRODUCTS LIMITED
PARTNERSHIP, an Oklahoma
Limited Partnership,

Plaintiff,

v.

MOYCO INDUSTRIES, INC.,
a Pennsylvania Corporation,

Defendant;

and

MOYCO INDUSTRIES, INC.,
a Pennsylvania Corporation,

Counterclaimant,

v.

TULSA DENTAL PRODUCTS
LIMITED PARTNERSHIP, an
Oklahoma Limited Partnership,

QUALITY DENTAL PRODUCTS, INC.,
a Tennessee Corporation, and

TULSA DENTAL PRODUCTS, L.L.C.,
an Oklahoma Limited Liability
Company,

Counterclaim Defendants.

Civil Action No. 94-C 669H

ORDER OF DISMISSAL WITH PREJUDICE

On joint stipulation of the parties pursuant to their settlement and Rule 41(a)(2), all claims herein are dismissed with prejudice, with each party to bear its attorneys' fees and costs. The Court retains jurisdiction to enforce the terms of settlement, should that become necessary.

Dated this ____ day of January, 1996.

HONORABLE SVEN ERIK HOLMES
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 2 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

DANIEL and JAMIE SWANSON,
Individually and as Parents
and Next Friends of the Minor
Child, JEREMY SWANSON,

Plaintiffs,

v.

CHRYSLER CORPORATION,

Defendant.

Case No. 95-C-638-K

ENTERED ON DOCKET

2-296

JOURNAL ENTRY OF JUDGMENT

On this 1st day of ^{Feb.} ~~January~~, 1996, the above-captioned matter came on for hearing being set specially, and it being agreed to waive a jury and try the issues before the Court. The Plaintiff, Jeremy Swanson, a minor child, appears via telephone through his parents and next friends, Daniel and Jamie Swanson, and by and through counsel, Bruce MacDougall, with Defendant, Chrysler Corporation, also appearing via telephone and by and through its counsel of record, Thomas G. Wolfe of Phillips McFall McCaffrey McVay & Murrah, P.C.. The Court, having heard the testimony of the witnesses, argument of counsel, and being fully advised in the premises, finds as follows:

That Jeremy Swanson is a minor under the age of eighteen years and has brought this action by and through his parents, Daniel and Jamie Swanson; that Jeremy Swanson suffered injuries and other damages; that as a result of the claim by and on behalf of Jeremy Swanson and the commencement of this action, the parties have reached an agreement of settlement, subject to the approval of the

Court, upon such terms and conditions as set forth in a Complete Release, Indemnity, Confidentiality and Settlement Agreement, which includes an agreement for the payment of \$35,000.00 to Jeremy Swanson, a minor child to be distributed as follows:

1. The sum of One Thousand and 00/100 Dollars (\$1,000.00) is to be paid to Daniel and Jamie Swanson, individually, for any claims they may have against Chrysler arising out of the subject accident and in consideration for their full release of any such claims;

2. The sum of Fourteen Thousand and 00/100 Dollars (\$14,000.00) is to be paid to Robert B. Smith and Bruce McDougall, the attorneys for the Plaintiffs, for their attorney fees and Four Thousand Eight Hundred Sixty and 14/100 Dollars (\$4,860.14) as costs for expenses incurred in representing the Plaintiffs in this matter; and,

3. The sum of Fifteen Thousand One Hundred Thirty-Nine and 86/100 Dollars (\$15,139.86) to be paid into a trust account at City National Bank in Lawton, Oklahoma for the benefit of Jeremy Swanson, a Minor, with withdrawals of monies from such account to be made only pursuant to Order of this Court in conformance with 12 Okla. Stat. § 83.

The Settlement Agreement referred to in the above paragraphs is fair and just and is entered into by the parties of their own free will and after being made fully aware of the circumstances.

The Plaintiffs, Daniel and Jamie Swanson, are aware that Jeremy Swanson, a Minor, has a right to a jury trial and said Minor has a right to await reaching the age of majority, and up to one

year thereafter, before bringing an action and by entering into this Settlement Agreement, has affirmatively agreed to waive any and all rights or claims against Defendant, Chrysler Corporation.

The compromise of this claim is in no way to be construed as admission of liability by Chrysler Corporation to the Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED:

That the terms of the Settlement Agreement set out herein are approved and that the claims of the Plaintiffs, Daniel and Jamie Swanson, Individually, and as Parents and Next Friends of Jeremy Swanson, a Minor, against Defendant Chrysler Corporation shall be dismissed with prejudice and the Court further hereby authorizes the Plaintiffs to enter into and execute any settlement documents or releases necessary to complete the settlement.

S/John L. Wagner

U.S. Magistrate

JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM and EUNICE BRYANT,
individually and as husband and wife,

Plaintiffs,

v.

NEW COLEMAN HOLDINGS INC.,
formerly THE COLEMAN COMPANY,
INC., a Kansas corporation, and
FISHER-ROSEMOUNT SYSTEMS, INC., a
Delaware corporation,

Defendants.

FILED
FEB -1 1996
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

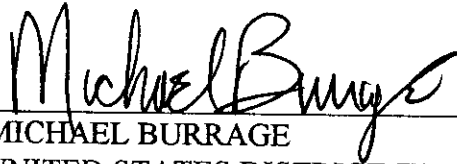
Case No. 95-C-681-BU

ENTERED ON DOCKET

FEB 02 1996

ORDER

UPON the joint Stipulation of Dismissal, the Court hereby orders that the Defendant, Fisher-Rosemount Systems, Inc., is dismissed from the above-action, without prejudice to refiling.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

**UNITED STATES COURT HOUSE
333 West Fourth Street, Room 411**

TULSA, OKLAHOMA 74103-3881

(918) 581-7796

**RICHARD M. LAWRENCE
CLERK**

February 1, 1996

ENTERED ON DOCKET

DATE

TO: Counsel/Parties of Record

RE: Case No. 95-C-1238-C

Rosenheck & Co., Inc., v. U.S.A., et al.

This is to advise you that Judge H. Dale Cook entered the following Minute Order this date in the above case:

The Court hereby grants plaintiff's motion to dismiss, filed on January 25, 1996 (docket number 3), in reliance upon plaintiff's representation that defendants have no objection.

Very truly yours,

RICHARD M. LAWRENCE, CLERK

By:

C. P. [Signature]
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB - 1 1996

Edward M. Lawrence, Court Clerk
U.S. DISTRICT COURT

WILLIAM and EUNICE BRYANT,
individually and as husband and wife,

Plaintiffs,

v.

Case No. 95-C-681-BU

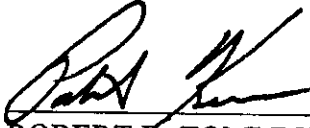
NEW COLEMAN HOLDINGS INC.,
formerly THE COLEMAN COMPANY,
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FISHER-ROSEMOUNT SYSTEMS, INC., a
Delaware corporation,

Defendants.

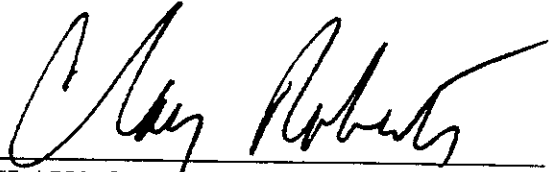
EOD 2-2-96

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW the parties through their respective counsel, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and stipulate to the dismissal without prejudice of Defendant Fisher-Rosemount Systems, Inc. ("Fisher"). Fisher and the Plaintiffs agree not to seek costs against each other.


ROBERT B. TOMLINSON
PATRICK H. KERNAN
McKINNEY, STRINGER & WEBSTER
Mid-Continent Tower, Suite 2100
401 South Boston
Tulsa, Oklahoma 74103
(918) 582-3176

Attorneys for Defendant
Fisher-Rosemount Systems, Inc.



C. CLAY ROBERTS III
ROBERTS, MARRS & CARSON
2250 East 73rd Street, Suite 330
Tulsa, Oklahoma 74136

Attorneys for Plaintiffs,
William and Eunice Bryant



PAMELA CLANCY
MORRISON & HECKER
600 Union Center
150 North Main Street
Wichita, Kansas 67202

Attorneys for Defendant
New Coleman Holdings Inc., formerly The
Coleman Company, Inc.
Evcon Industries, Inc.

CERTIFICATE OF SERVICE

This will certify that the foregoing Stipulation of Dismissal Without Prejudice was hand delivered and mailed this 31 day of January, 1996, to:

C. Clay Roberts, III, Esq.
Richard D. Marrs, Esq.
Russell D. Carson, Esq.
Roberts, Marrs & Carson
2250 East 73rd Street, Suite 330
Tulsa, OK 74136

Attorneys for Plaintiffs

Pamela Clancy, Esq.
Morrison & Hecker
600 Union Center
150 North Main Street
Wichita, KS 67202

Attorneys for Defendant
New Coleman Holdings, Inc.

Evcon Industries, Inc.



PATRICK H. KERNAN

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHARLES E. CRABTREE,

Plaintiff,

vs.

TULSA COUNTY DISTRICT COURT, and
KEITH O. MCARTOR,

Defendants.

ENTERED ON DOCKET

DATE FEB 01 1996

No. 96-C-49-BU ✓

FILED

JAN 31 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

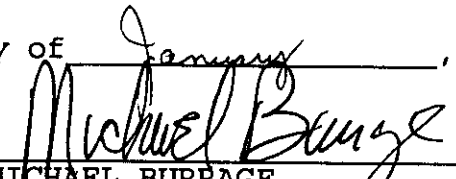
Plaintiff, an inmate at the Tulsa County Jail, has filed a motion for leave to proceed in forma pauperis and a civil rights action against Sallie Howe Smith, Court Clerk of Tulsa County District Court, and Assistant District Attorney Keith McArtor for malicious prosecution and defamation of character.

Neither Ms. Smith nor the Tulsa County District Court is involved in the prosecutorial process which is the subject of this action. See Meade v. Grubbs, 841 F.2d 1512, 1528 (10th Cir. 1990) (a defendant cannot be liable under section 1983 unless that defendant personally participated in the challenged action). Therefore, Plaintiff's claims against Ms. Smith and the Tulsa County District Court are hereby dismissed as they lack an arguable basis in law. See 28 U.S.C. § 1915(d).

Accordingly, Plaintiff's motion for leave to proceed in forma pauperis (docket #2) is GRANTED and the Clerk shall cause summons to be issued and served without prepayment of fees and costs as to

Keith McArtor. The Tulsa County District Court is hereby DISMISSED
WITHOUT PREJUDICE.

IT IS SO ORDERED this 31st day of January, 1996.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

LARRY DALE,

PLAINTIFF,

vs.

BRAD PAYAS,
and PAULA POTTS,

DEFENDANTS.

CASE No. 95-C-191-BU

JAN 31 1996
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE FEB 01 1996

REPORT AND RECOMMENDATION

On March 1, 1995, Plaintiff filed two almost identical complaints in this Court asserting violations of 42 U.S.C. § 1983. In the present case, Plaintiff asserts claims against Brad Payas, Dick Conner Correctional Center's (DCCC) Health Services Administrator, and Paula Potts, DCCC's Medical Records Technician. In Case No. 95-C-190-B, Plaintiff asserted claims against Ron Champion, Warden at DCCC, and a Licensed Practical Nurse, employed by DCCC, whom Plaintiff identified as Mary Carter.


Based upon the identical nature of the allegations in this complaint with those contained in 95-C-190-B, the Court RECOMMENDS that this case be DISMISSED because the identical issues are resolved in the lower case Number 95-C-190-B, or, in the alternative, that the Court adopt the Report and Recommendation filed in Case No. 95-C-190-B as the Order of the Court in this case.¹

In accordance with 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b), any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of

¹ A copy of the Report and Recommendation in 95-C-190-B is attached to this Report and Recommendation.

the receipt of this Report. Failure to file objections within the time specified waives the right to appeal from a judgment of the District Court based upon the findings and recommendations of the Magistrate Judge. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

DATED this 31ST day of January, 1996.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LARRY DALE,

PLAINTIFF,

vs.

RONALD J. CHAMPION,
and MARY CARTER,

DEFENDANTS.

CASE No. 95-C-190-B

REPORT AND RECOMMENDATION

Before the Court for Report and Recommendation is the defendants' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT [Dkt. 6], in the above referenced matter. The Court has reviewed and considered Plaintiff's Complaint Pursuant to 42 U.S.C. § 1983 and the supporting attachments thereto, Defendants' Motion To Dismiss/Motion For Summary Judgment and Brief in Support, the Report of Review of Factual Basis of Claims Asserted in Civil Rights Complaint Pursuant to U.S.C. § 1983 filed by Defendants pursuant to the Order of this Court and Plaintiff's Reply which was filed in Case No. 95-C-191-BU.¹

SUMMARY JUDGMENT STANDARDS

The court must grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

¹ On March 1, 1995, Plaintiff filed two almost identical Complaints in this Court alleging violations of 42 U.S.C. § 1983. In Case No. 95-C-190-B, Plaintiff asserts causes of action against Ron Champion, Warden at Dick Conner Correctional Center (DCCC) and Mary Carter, Licensed Practical Nurse employed by DCCC. In Case No. 95-C-191-BU, Plaintiff asserts claims against Brad Payas, DCCC Health Services Administrator, and Paula Potts, DCCC Medical Records Technician. Aside from naming different defendants, the complaints assert identical factual basis for Plaintiff's §1983 action.

matter of law." Fed. R. Civ. P. 56(c). When reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party. *Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc.*, 912 F.2d 1238, 1241 (10th Cir. 1990). "However, the nonmoving party may not rest on its pleadings but must set forth specific facts showing that there is a genuine issue for trial as to those dispositive matters for which it carries the burden of proof." *Id.* Conclusory allegations are insufficient to establish a genuine issue of fact. *McKibben v. Chubb*, 840 F.2d 1525, 1528 (10th Cir. 1988). Nor does the existence of an alleged factual dispute defeat an otherwise properly supported motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505 (1986).

The court may treat the Martinez report as an affidavit in support of the motion for summary judgment, but may not accept the factual findings of the report if the prisoner has presented conflicting evidence. *See Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1991). This process aids the court in determining possible legal bases for relief for unartfully drawn pro se prisoner complaints, and not to resolve material factual issues. *Id.* at 1009. The court must also construe the plaintiff's pro se pleadings liberally. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594 (1972).

Although Plaintiff asserts three counts in his complaint, all three counts relate to the same incident. In Count I, Plaintiff brings a claim for medical negligence. In Count II, Plaintiff brings a claim for unauthorized personnel administering medical care. And, in Count III, Plaintiff brings a claim for administrative negligence. In Case No. 95-C-191-BU, the Court has previously filed an Order construing the three claims asserted by Plaintiff to constitute a single claim alleging deliberate indifference to Plaintiff's legitimate and serious medical needs in

violation of the Eighth Amendment to the United States Constitution. This Court, likewise, construes Plaintiff's three counts to assert one claim of deliberate indifference to Plaintiff's legitimate and serious medical needs in violation of the Eighth Amendment to the United States Constitution.

Plaintiff alleges that on October 25, 1994, he went to the medical unit at DCCC to have some blood work done. Plaintiff further asserts that instead of drawing the blood herself as she was required to do, nurse "Mary"² directed a secretary to draw Plaintiff's blood. Plaintiff asserts that the secretary injured his arm while drawing the blood, causing bleeding, soreness and pain. Plaintiff further asserts that if his blood were drawn by someone who knew what they were doing, such as nurse "Mary," he would not have experienced the bleeding, soreness and pain. Thus, Plaintiff is essentially asserting that the State was deliberately indifferent to his medical needs by allowing an untrained/unauthorized employee to draw his blood which resulted in a negligently performed procedure causing Plaintiff physical injury and pain.

In response, the State, through the Martinez Report, asserts that the secretary who drew Plaintiff's blood, Paula Potts, had been properly trained to draw blood, and supports this assertion with the statements of Paula Potts and her previous employer, Michael Mitchell, D.O. Dr. Mitchell reported that during Ms. Potts's prior employment with him, he had trained her in the proper method to draw blood and that she drew blood on a regular basis in his private medical practice.

Plaintiff has failed to present any evidence to contest the evidence produced by the State

² Plaintiff's Complaint refers to the nurse involved as "Mary Carter." It is clear from the Martinez report that the correct name of the nurse is Merry J. Clark, L.P.N.

that Paula Potts was properly trained to draw blood and had done so in her prior employer's private practice.

DELIBERATE INDIFFERENCE

Prison officials violate a prisoner's Eighth Amendment right not to be subjected to cruel and unusual punishment if they are deliberately indifferent to the prisoner's serious medical needs, *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 798 (1976). The deliberate indifference standard has two components: an objective component requiring that the pain or deprivation be sufficiently serious; and a subjective component requiring that the offending officials act with a sufficiently culpable state of mind. *Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321 (1991).

In the present case, Plaintiff has failed to establish either of the required components. Even if one were to assume that the person drawing Plaintiff's blood was not properly trained, which assumption the Court specifically rejects, such an assertion would fail to demonstrate that the pain or deprivation was sufficiently serious to invoke the Eighth Amendment's cruel and unusual punishment prohibition. Likewise, Plaintiff has completely failed to show the subjective component requiring that the offending officials act with a sufficiently culpable state of mind. In the present case, the facts are undisputed that the State official who drew Plaintiff's blood had been previously trained to draw blood and had, in fact, drawn blood while working for a private practice physician.


At most, Plaintiff has asserted that the State official drawing his blood was negligent in performing that procedure. Neither negligence or gross negligence meets the deliberate indifference standard required for a violation of the cruel and unusual punishment clause of the Eighth Amendment. *Estelle, id.*, at 104-105.

After viewing the evidence in the light most favorable to the plaintiff, the Court concludes that the plaintiff has failed to controvert Defendants' summary judgment evidence and that Defendants are entitled to judgment as a matter of law.

IT IS THEREFORE THE RECOMMENDATION OF THIS COURT that Defendants' Motion For Summary Judgment [Dkt. 6] be GRANTED.

In accordance with 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b), any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of the receipt of this Report. Failure to file objections within the time specified waives the right to appeal from a judgment of the District Court based upon the findings and recommendations of the Magistrate Judge. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

DATED this 31ST day of January, 1996.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 31 1996

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

RANDY MARTIN and PATTY MARTIN,

Plaintiffs,

v.

SHELTER GENERAL INSURANCE CO.,

Defendant.

93-C-977-W ✓

ENTERED ON DOCKET

DATE FEB 01 1996

SECOND AMENDED JUDGMENT

This action having been tried, and the jury having rendered a verdict in favor of plaintiffs in the amount of \$132,372.45 in contract damages and \$10,000.00 in bad faith damages, the court adjusts the award of contract damages by crediting the amount of \$8,000.00 previously paid by defendant for additional living expenses (ALE) and by crediting the amount of \$92,671.91 unconditionally paid by defendant during the litigation, and finds that judgment should be entered in favor of the plaintiffs in the amount of \$41,700.54, plus prejudgment interest in the amount of \$38,196.22 for the period April 23, 1992 to June 1, 1994 and \$3,726.96 for the period April 23, 1992 to June 20, 1994, for a total of \$83,623.72.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of plaintiffs in the amount of \$83,623.72, plus costs and post-judgment interest on that amount at the rate of 5.28% from June 20, 1994 until payment is made.

Dated this 30th day of January, 1996.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

S:Martin.5

FILED
JAN 31 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

RAMONA KEPLER,

Plaintiff,

vs.

DONNA SHALALA, SECRETARY OF HEALTH
AND HUMAN SERVICES,

Defendant.

No. 92-C-752-E

ENTERED ON DOCKET

DATE FEB 01 1996

ORDER

Before the Court is the Motion for Attorney Fees and Costs (Docket #22) of the plaintiff Ramona Kepler.

The parties have stipulated that a reasonable amount of \$4750.00 in fees and costs should be awarded, and that, if counsel is ultimately granted fees pursuant to 42 U.S.C. §406(b)(1), the smaller amount shall be refunded to the plaintiff.

It is therefore Ordered that Plaintiff's counsel should be compensated in the amount of \$4,750.00 in costs and attorney fees and that, if fees are granted pursuant to 42 U.S.C. §406(b)(1), the smaller amount shall be refunded to the plaintiff.

It is so Ordered this 30th day of January, 1996.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

FILED
BY CLERK
PRO SE
UPON RECEIPT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LARRY DALE,

PLAINTIFF,

vs.

RONALD J. CHAMPION,
and MARY CARTER,

DEFENDANTS.

FILED

JAN 31 1996

CASE No. 95-C-190-B

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
FEB 01 1996
DATE _____

REPORT AND RECOMMENDATION

Before the Court for Report and Recommendation is the defendants' MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT [Dkt. 6], in the above referenced matter. The Court has reviewed and considered Plaintiff's Complaint Pursuant to 42 U.S.C. § 1983 and the supporting attachments thereto, Defendants' Motion To Dismiss/Motion For Summary Judgment and Brief in Support, the Report of Review of Factual Basis of Claims Asserted in Civil Rights Complaint Pursuant to U.S.C. § 1983 filed by Defendants pursuant to the Order of this Court and Plaintiff's Reply which was filed in Case No. 95-C-191-BU.¹

SUMMARY JUDGMENT STANDARDS

The court must grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

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The court may treat the Martinez report as an affidavit in support of the motion for summary judgment, but may not accept the factual findings of the report if the prisoner has presented conflicting evidence. *See Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1991). This process aids the court in determining possible legal bases for relief for unartfully drawn pro se prisoner complaints, and not to resolve material factual issues. *Id.* at 1009. The court must also construe the plaintiff's pro se pleadings liberally. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594 (1972).

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violation of the Eighth Amendment to the United States Constitution. This Court, likewise, construes Plaintiff's three counts to assert one claim of deliberate indifference to Plaintiff's legitimate and serious medical needs in violation of the Eighth Amendment to the United States Constitution.

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In response, the State, through the Martinez Report, asserts that the secretary who drew Plaintiff's blood, Paula Potts, had been properly trained to draw blood, and supports this assertion with the statements of Paula Potts and her previous employer, Michael Mitchell, D.O. Dr. Mitchell reported that during Ms. Potts's prior employment with him, he had trained her in the proper method to draw blood and that she drew blood on a regular basis in his private medical practice.

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that Paula Potts was properly trained to draw blood and had done so in her prior employer's private practice.

DELIBERATE INDIFFERENCE

Prison officials violate a prisoner's Eighth Amendment right not to be subjected to cruel and unusual punishment if they are deliberately indifferent to the prisoner's serious medical needs, *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 798 (1976). The deliberate indifference standard has two components: an objective component requiring that the pain or deprivation be sufficiently serious; and a subjective component requiring that the offending officials act with a sufficiently culpable state of mind. *Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321 (1991).

In the present case, Plaintiff has failed to establish either of the required components. Even if one were to assume that the person drawing Plaintiff's blood was not properly trained, which assumption the Court specifically rejects, such an assertion would fail to demonstrate that the pain or deprivation was sufficiently serious to invoke the Eighth Amendment's cruel and unusual punishment prohibition. Likewise, Plaintiff has completely failed to show the subjective component requiring that the offending officials act with a sufficiently culpable state of mind. In the present case, the facts are undisputed that the State official who drew Plaintiff's blood had been previously trained to draw blood and had, in fact, drawn blood while working for a private practice physician.

At most, Plaintiff has asserted that the State official drawing his blood was negligent in performing that procedure. Neither negligence or gross negligence meets the deliberate indifference standard required for a violation of the cruel and unusual punishment clause of the Eighth Amendment. *Estelle, id.*, at 104-105.

After viewing the evidence in the light most favorable to the plaintiff, the Court concludes that the plaintiff has failed to controvert Defendants' summary judgment evidence and that Defendants are entitled to judgment as a matter of law.

IT IS THEREFORE THE RECOMMENDATION OF THIS COURT that Defendants' Motion For Summary Judgment [Dkt. 6] be GRANTED.

In accordance with 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b), any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of the receipt of this Report. Failure to file objections within the time specified waives the right to appeal from a judgment of the District Court based upon the findings and recommendations of the Magistrate Judge. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

DATED this 31st day of January, 1996.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 01 1996

BRUCE SHOEBOOTTOM,
Plaintiff,

vs.

CITY OF TULSA, et al.,
Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

No. 95-C-258-K

ENTERED ON DOCKET

DATE FEB 01 1996

ADMINISTRATIVE CLOSING ORDER

The Court has been advised that this action has settled or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 31 day of January, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE ~~FEB 01 1996~~

UNITED STATES OF AMERICA,
on behalf of Consolidated Farm Service Agency,
formerly Farmers Home Administration,

Plaintiff,

v.

KYLE T. YOUNG and
BANK OF WYANDOTTE,

Defendants.

FILED

JAN 31 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 95-C-643-K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day of January,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney; the Defendant, **Bank of Wyandotte**, appears by its attorney Robert G. Haney; and the Defendant, **Kyle T. Young**, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, **Kyle T. Young**, was served with Summons and Complaint by a United States Deputy Marshal on October 26, 1995; and that the Defendant, **Bank of Wyandotte**, executed a Waiver of Service of Summons on July 17, 1995.

It appears that the Defendant, **Bank of Wyandotte**, filed its Answer on or about August 3, 1995; and that the Defendant, **Kyle T. Young**, has failed to answer and his default has therefore been entered by the Clerk of this Court.

NOTE: THIS CLERK IS TO BE MAILED
BY MAIL TO THE COURT CLERK AND
PRO. OF THE COURT IMMEDIATELY
UPON RECEIPT.

The Court further finds that this is a suit based upon certain promissory notes and for foreclosure of security agreements on certain personal property (chattels) located within the Northern Judicial District of Oklahoma.

The Court further finds that Consolidated Farm Service Agency, formerly Farmers Home Administration, is now known as Farm Service Agency.

The Court further finds that Defendant, Kyle T. Young, executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Farm Service Agency, formerly Consolidated Farm Service Agency, the following promissory notes.

Loan Number	Original Amount	Date	Interest Rate
43-01*	\$48,000.00	October 19, 1981	14.50%
43-03**	10,480.00	August 20, 1985	5.00%
44-04***	33,317.89	August 22, 1985	10.25%
43-05	7,469.35	October 20, 1988	4.50%
43-06	39,382.75	October 20, 1988	9.50%

*Rescheduled to Loan No. 44-04 **Rescheduled to Loan No. 43-05 ***Rescheduled to Loan No. 43-06

The Court further finds that as collateral security for the payment of the above-described notes, Defendant, Kyle T. Young, executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Farm Service Agency, formerly Consolidated Farm Service Agency, the following financing statements and security agreements thereby creating in favor of the Farmers Home Administration, now known as Farm Service Agency, formerly Consolidated Farm Service Agency, a security interest in certain crops, livestock, and farm machinery described therein.

Instrument	Dated	Filed	County	File Number
Financing Stmt.	12/02/88	12/02/88	Oklahoma	886546
Continuation Stmt.	11/17/93	11/17/93	Oklahoma	886546C
Financing Stmt.	07/02/93	07/02/93	Ottawa	750
Security Agreement	10/19/81			
Security Agreement	10/30/81			
Security Agreement	08/13/82			
Security Agreement	07/08/83			
Security Agreement	07/03/84			
Security Agreement	06/19/85			
Security Agreement	06/18/86			
Security Agreement	06/02/87			
Security Agreement	02/23/89			
Security Agreement	02/21/90			
Security Agreement	03/09/91			
Security Agreement	03/28/92			

The Court further finds that the Defendant, **Kyle T. Young**, made default under the terms of the aforesaid notes and security agreements by reason of his failure to make the yearly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Kyle T. Young**, is indebted to the Plaintiff in the principal sum of \$45,101.32, plus accrued interest in the amount of \$10,656.10 as of November 4, 1994, plus interest accruing thereafter at the rate of \$10.8769 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$21.00 (fees for service of Summons and Complaint).

The Court further finds that the Defendant, **Bank of Wyandotte**, claims a priority interest in the following described equipment by virtue of its Security Agreement and Financing Statements in the amount of \$7,036.00 plus accrued interest in the amount of \$388.62, with interest accruing at the rate of \$2.70 per diem from the 1st day of August, 1995, until paid:

1987 Chevrolet C-70 W/Dump Bed Truck, VIN. 1GBM7D1G4HV115591
1973 GMC Model 9500 Truck W/Dump Bed, VIN. TJ190DV564341

The Defendant, **Bank of Wyandotte**, also claims a priority interest in the following described equipment by virtue of its Security Agreement and Financing Statements in the amount of \$6,260.92 plus accrued interest in the amount of \$316.99, with interest accruing at the rate of \$2.40 per diem from the 1st day of August, 1995, until paid:

1985 Remington 16' x 80' Mobile Home, SN: 50301553
1989 Gehl Model 1465 Round Baler, SN: 16460
1989 Gehl Model 2170 Mower Conditioner, SN: 21694

The Defendant, **Bank of Wyandotte**, also claims a priority interest in the following described equipment by virtue of its Security Agreement and Financing Statements in the amount of \$9,015.00 plus accrued interest in the amount of \$131.64, with interest accruing at the rate of \$3.21 per diem from the 1st day of August, 1995, until paid:

930 Cat Rubber Tire Front End Loader, SN: 41K11559

In addition to the above-described liens, the Defendant, **Bank of Wyandotte**, also claims reasonable attorney fees in the amount of \$750.00.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Farm Service Agency, formerly Consolidated Farm Service Agency, formerly Farmers Home Administration, have

and recover judgment against the Defendant, **Kyle T. Young**, in the principal sum of \$45,101.32, plus accrued interest in the amount of \$10,656.10 as of November 4, 1994, plus interest accruing thereafter at the rate of \$10.8769 per day until judgment, plus interest thereafter at the current legal rate of 5.14 percent per annum until paid, plus the costs of this action in the amount of \$21.00 (fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject personal property (chattels).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Bank of Wyandotte**, have and recover judgments in the amount of \$7,036.00 plus accrued interest in the amount of \$388.62, with interest accruing at the rate of \$3.70 per diem from the 1st day of August, 1995, until paid; in the amount of \$6,260.92 plus accrued interest in the amount of \$316.99, with interest accruing at the rate of \$2.40 per diem from the 1st day of August, 1995, until paid; and in the amount of \$9,015.00 plus accrued interest in the amount of \$131.64, with interest accruing at the rate of \$3.21 per diem from the 1st day of August, 1995, until paid, plus reasonable attorney fees in the amount of \$750.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, **Kyle T. Young**, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the personal property (chattels) involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said personal property (chattels);

Second:

In payment of the judgments plus attorney fees rendered herein in favor of the Defendant, Bank of Wyandotte;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

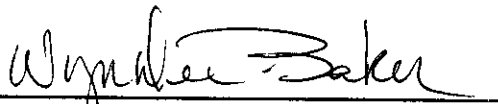
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the personal property (chattels), under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject personal property (chattels) or any part thereof.

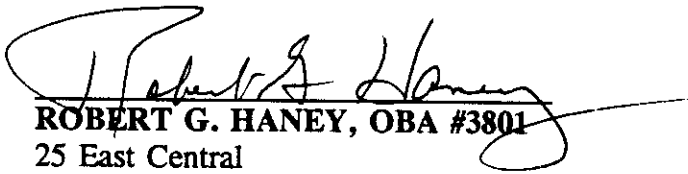
s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



ROBERT G. HANEY, OBA #3801

25 East Central

P.O. Box 993

Miami, Oklahoma 74355

(918) 542-1606

Attorney for Defendant,

Bank of Wyandotte

Judgment of Foreclosure

Case No. 95-C-643-K (Young)

WDB:cm

PRO SECUTIO IS REQUESTED IMMEDIATELY
PRO SECUTIO IS REQUESTED IMMEDIATELY
UPON DECISION

SPRINGS, Oklahoma, acknowledged receipt of Summons and Complaint on July 10, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on July 20, 1995; that the Defendant, CITY OF SAND SPRINGS, Oklahoma, filed its Disclaimer on July 28, 1995; and that the Defendants, BILLY J. FLOYD aka Billy James Floyd and KIMBERLY D. FLOYD aka Kimberly D. Floyd, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, BILLY J. FLOYD, is one and the same person as Billy James Floyd, and will hereinafter be referred to as "BILLY J. FLOYD." The Defendant, KIMBERLY D. FLOYD, is one and the same person as Kimberly Diane Floyd, and will hereinafter be referred to as "KIMBERLY D. FLOYD." The Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, are husband and wife.

The Court further finds that on April 27, 1990, Billy James Floyd and Kimberly Diane Floyd, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Norther District of Oklahoma, Case No. 90-01116-C. On August 15, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor, and the case was subsequently closed on October 17, 1990.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**LOT NINE (9), BLOCK TWO (2), COUNTRY MEADOW
ESTATES I, AN ADDITION TO THE CITY OF SAND**

**SPRINGS, TULSA COUNTY, STATE OF OKLAHOMA,
ACCORDING TO THE RECORDED PLAT THEREOF.**

The Court further finds that on June 24, 1988, the Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, executed and delivered to FIRST SECURITY MORTGAGE COMPANY, their mortgage note in the amount of \$49,184.00, payable in monthly installments, with interest thereon at the rate of Ten and One-Half percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, husband and wife, executed and delivered to FIRST SECURITY MORTGAGE CO., a mortgage dated June 24, 1988, covering the above-described property. Said mortgage was recorded on June 29, 1988, in Book 5110, Page 1605, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 21, 1988, FIRST SECURITY MORTGAGE COMPANY, assigned the above-described mortgage note and mortgage to GOVERNMENT NATIONAL MORTGAGE ASSOCIATION. This Assignment of Mortgage was recorded on September 11, 1988, in Book 5206, Page 1802, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 1, 1989, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on December 4, 1989, in Book 5223, Page 902, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 1, 1989, the Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, entered into an agreement with the Plaintiff lowering

the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on December 1, 1989, November 1, 1990, November 1, 1991, July 1, 1992, and October 1, 1992.

The Court further finds that the Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, are indebted to the Plaintiff in the principal sum of \$78,348.00, plus interest at the rate of 10.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$31.00 which became a lien on the property as of June 23, 1994. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, CITY OF SAND SPRINGS, Oklahoma, Disclaims any right, title or interest in the subject property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, in the principal sum of \$78,348.00, plus interest at the rate of 10.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5-16 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$31.00, plus costs and interest, for personal property taxes for the year 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, CITY OF SAND SPRINGS, Oklahoma, BILLY J. FLOYD and KIMBERLY D. FLOYD, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, BILLY J. FLOYD and KIMBERLY D. FLOYD, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$31.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

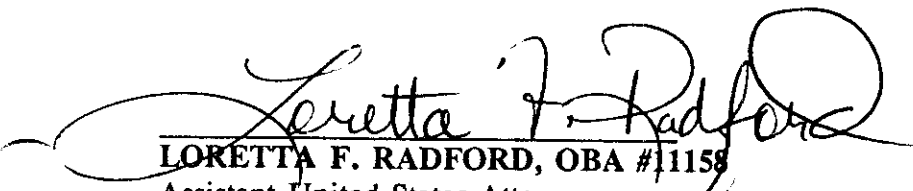
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ **TERRY C. KERN**
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 618K

LFR:flv